Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927.

277
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No. 603

L. P. LARSON, JR., COMPANY, PETITIONER,

vs.

WM. WRIGLEY, JR., COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 4, 1927

CERTIORARI GRANTED DECEMBER 5, 1927

(33,055)

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1927.

No.

L. P. LARSON, JR. COMPANY,
Petitioner,

vs.

WM. WRIGLEY, JR. COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RECORD

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IN THE

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FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1925.

No. 3727

L. P. LARSON, JR., COMPANY,

Appellant,

vs.

WM. WRIGLEY, JR., COMPANY,

Appellee.

No. 3728

WM. WRIGLEY, JR., COMPANY,

Appellant,

vs.

L. P. LARSON, JR., COMPANY,

Appellee.

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(2768) VOL. II.

2249 Friday, June 27, 1919, 4:00 o'clock P. M.

EDWARD GLEDHILL, called as a witness by the L. P. Larson Jr. Company, having been first duly sworn, on direct examination by Mr. Aldrich testified as follows:

My name is Edward Gledhill. I am employed by Marwick, Mitchell, Peat & Company. I took the oath of office in this litigation as an accountant on December 19, 1918. I read over my testimony in the case the day before and I visited Wrigley's office I think on the afternoon of the day I was sworn. I went to Wrigley's office for the first time to do any work the day after.

2250 As to how soon after I commenced work there, I was first entertained by any of the officers or employes of the Wrigley Company at the Illinois Athletic Club, or elsewhere, I will say that as near as I can recall it, I think I first went to the Illinois Athletic Club about February 1st, or thereabouts. As to whether I had been there before that date, I will say I cannot swear as to the exact date, but before I was there with Mr. Stanley and Mr. Cox, I do not know of any others, there might have been. I was not in the Athletic Club before that time.

I think the date I became a member of the Illinois Athletic Club was probably February 25, 1919. I was there a number of times with those gentlemen prior to that. The only officers of the Wrigley Company that I visited the (2769) Illinois Athletic Club with were Mr. Cox and Mr. Stanley, although there were one or two other employes there.

When I became a member of that club, I was vouched for by Messrs. Stanley and Cox. I do not know whose 2251 membership it was. I was informed it was a treasury membership. I paid for the membership myself. I borrowed the money from Mr. James Hall. I repaid part of the money. I made the loan from Mr. Hall as soon as I knew that I could join the club and buy this treasury membership. I think I learned that about the middle of February. I had been entertained at the Chicago Athletic Club by these gentlemen connected with the Wrigley Company and I have been to Mr. Stanley's house. I

2252 have been in the automobiles of two of the officers. Mr. Eckerly once took me up into Lincoln Park at my request when I was going out for a walk and wished to walk back. I think he took me up as far as Diversey Boulevard. On another occasion Mr. Cox took me up to the North Side park. When I borrowed the money of Mr. Hall, he knew the purpose for which I was borrowing it. Prior to that time, I don't think Mr. Hall had been advised in any way that I had been fraternizing with the officers of the Wrigley Company at the Illinois Athletic Club or elsewhere. The first direct conversation I had with Mr. Hall on the subject was, I think, at the time Mr. Aldrich first brought his complaint.

(Mr. Aldrich then stated that when the facts were first called to his attention, he took the question up with his associates in the case as to whether he should call Mr.
(2770) Gledhill to the stand for the purpose of ascertaining the extent of his relations with these men, or whether he should direct the master's attention to the fact, and that
2253 it was decided that as the appointment of Messrs. Marwick, Mitchell, Peat & Company had been made by the court, and they did not wish to reflect in any way on said appointment, they would call the master's attention to it. The master stated that he would take the matter up with Mr. Hall, but having further information on the subject, Mr. Aldrich advised Mr. Morrison that he desired to have an investigation. The master stated that Mr. Aldrich's statement was substantially correct.

Mr. Aldrich, in answer to a question put to him by Mr. Mayer, then stated that he conceded that no one connected with the offices of the Wrigley Company's counsel had any notice of those conferences and that none were present at any of them.

2254 The master then stated that when the matter was called to his attention, he was undecided as to whether to call the attention of counsel for the Wrigley Company to the matter, but he concluded not to do so, and so stated to Mr. Aldrich; that the master thought that if Mr. Gledhill had been indiscreet all he needed was a warning and that the master would have Mr. Hall speak to him; that the master did not want to do anything to cause suspicion unless he became satisfied that a serious situation ex-
(2771) isted; that the master regarded it as a matter to be
2254 dealt with by the master and Mr. Hall and that the mas-

ter spoke to Mr. Hall and Mr. Hall talked to Mr. Gledhill; that Mr. Hall's report to the master of his talk to Mr. Gledhill confirmed the master's belief that there would be no further cause for uneasiness; that the master was, however, inclined at the time to take Mr. Gledhill off from the work because of the fact that the master thought that Mr. Gledhill had been indiscreet, although the master did not think Mr. Gledhill had been dishonest or that he had done anything wrong, and the master so expressed himself to Mr. Hall and to Mr. Aldrich; that when he reached
(2272) the conclusion to ask Mr. Hall to relieve Mr. Gledhill, Mr. Hall was out of the city, so through the manager of Mr. Hall's firm, he had Mr. Gledhill suspend work on the Wrigley's books. That Mr. Gledhill had come to him, not knowing why the work had been supended, as not a word had been said between him and the master, and after talking with Mr. Gledhill, the master concluded it was best
2255 for him to go ahead and complete some unfinished work and perhaps continue indefinitely, depending upon what might develop in the future. That Mr. Aldrich had yesterday again called the matter to his attention and he, the master, then determined that the Wrigley Company counsel should be notified so that whatever was done should become a part of the record in this case.
(2773) Mr. Mayer then said he was very glad that the Mas-
2255 ter did that and Mr. Aldrich said it was his wish also and Mr. Mayer said that he thinks it should have been done at first. The Master said that Mr. Aldrich suggested it at that time but that the Master didn't think it was necessary. Mr. Mayer then said that he did not wish to interrupt this examination but, on the contrary, he thought it
2256 ought to go on and be fully investigated as both the litigants, the witness, Gledhill, his employer and the court were interested in the matter.

(The witness continued):

2259 I borrowed the money to join the Club of Marwick, Mitchell Peat & Company. I might be able to ascertain the exact date from my check book. I can't give the exact date now. None of the members of that firm or Mr. Hall, who had especial charge of this work, to the best of my knowledge and belief, knew of my Club or social relations with the officers of the Wrigley Company.

2260 I have stayed at the Illinois Athletic Club after dinner with those gentlemen, but apart from that, I don't re-

(2774) member any other engagements than those I have referred to. On one or two occasions I stayed after dinner for a considerable time talking with those two gentlemen. I don't think Mr. Hall knew anything of these meetings at the club.

After I became a member of the club I was accustomed to have luncheon at the same table. The member of the Wrigley official staff with whom I was most intimate was Mr. Rose, an employe, because he lived at the club for a little while and of course I ran into him. The officer of the company with whom I was there most frequently was Mr. Stanley. I have been at Mr. Stanley's house twice.

I don't know that Mr. Hall knew of my relations with
2261 these Wrigley officers. When he had been advised through the master, or otherwise, of those relations, he said it was indiscreet. After Mr. Hall told me he thought it was indiscreet I did not continue those relations at all. On one occasion I had a meal with those gentlemen after Mr. Aldrich's complaint had been made to the Master. That was because those men came to the table after I sat down. I didn't know they were coming over. I am not able to give that date.

It is not a fact that in some way I acquired a strong bias in this case. I have not so expressed myself to oth-
2262 ers. As to whether or not I have not said that the Larson Company had detectives watching me and that I was for the Wrigley Company and that I didn't care who knew it, or words to that effect, I will say that I might have said the Larson Company had detectives on my trail, but I did not say the other part. I do not know to whom
(2775) I said the Larson Company had detectives on my trail. I have not stated that the Larson claim, in my opinion, against the Wrigley Company was a blackmailing scheme. I have not so expressed myself to anybody, not as my own opinion. By the last answer I mean I have acquired the opinion that the Wrigley Company think it is a pretty strong case and I might have passed that opinion on, although I do not know that I have done that. I certainly never used the word "blackmail", to the best of my knowledge and belief.

2263 At these meetings at the club or social occasions I have talked about accounting matters with the officers of the Wrigley Company. I have not expressed to any of the officers of the Wrigley Company my views as an account-

ant on any of the subjects of my investigation, or about the advertising account. I have not any specific views myself. I have discussed the advertising very fully with Mr. Stanley, but I have never given him any conclusions, nor any final conclusions, because I have not any.

As to the question as to whether I have told Mr. Stanley the result of my investigations in any respect, I will
2264 say I think I have made the statement that on their basis of obtaining sales the sales of the Wrigley Company were
2265 probably overstated. I believe I have made a statement that possibly apportionment of overhead on a box basis might be more equitable than on a sales basis. I have not prepared any figures on the overhead. I am conducting my examination towards that end now. I started to conduct an analytical examination on that on Monday afternoon. Prior to that I had been in the overhead account superficially only. I could not say when it was I ex-
(2776) pressed my opinion to Mr. Stanley with reference to the apportionment of the overhead. I only made that statement on general principles. I have not at any time stated to anyone that if Marwick, Mitchell, Peat & Company discharged me that the Wrigley Company would take care of me. There has not been any talk of that kind with anybody.

2265 *Cross-Examination by Mr. Mayer.*

As to the question whether this is the first time Mr. Mayer and I have met, I will say I have seen Mr. Mayer
2266 once. He was washing his hands at the Wrigley Company office and I was in the same room on such occasion. I was never in any conference that Mr. Mayer was at. I have never met Mr. Lane. I have never spoken a word to him. Mr. Mayer and Mr. Lane are both utter strangers to me, so far as any personal acquaintance is concerned.

I am twenty-six years old. I have lived in Chicago from the middle of November, 1914, until about May, 1916, except when I was out of town, which was quite considerable. Since then I have lived in Chicago from Christmas Eve, 1918, up to date. Prior to that I was in Milwaukee. I do not know Mr. Aldrich. I have worked for Marwick, Mitchell, Peat & Company since November
2267 11, 1914, as an expert accountant. Marwick, Mitchell, Peat & Company is one of the largest firms in the world.

It has branch offices in most of the important cities throughout this country and some abroad. I have been in their employ for about four and one-half to five years.
(2777) During that time I have been engaged in extensive, important and confidential work. My integrity has never been questioned before, either while in their employ or anyone else's employ. I started as an accountant about June 28, 1909. I am not a certified public accountant. I am an English chartered accountant. To be an English chartered accountant requires a certain amount of schooling or education. It required that I had to be articled or
2268 apprenticed to a chartered accountant for a period of five years.

Prior to my employment by Marwick, Mitchell, Peat & Company, I never did any work for or on behalf or in any way connected with the Wm. Wrigley Jr. Company. Prior to that time I had not any acquaintance among either the officers or employes of the Wm. Wrigley Jr. Company. I have never been in their place of business, and was not acquainted with anyone connected with that institution so far as I know. Mr. Hall was the first person that ever mentioned to me the subject of my doing any work in the office of Wm. Wrigley Jr. Company. He was the Chicago manager of this auditing company and a partner therein. He is my immediate superior and has been during all the years I was in the employ of that concern. During the time of my employment with that concern, I have not always been connected with the Chicago branch. I was with the Milwaukee branch over
2269 which Mr. Hall also has jurisdiction. I have always been connected with the Western branch of that concern and always under Mr. Hall's jurisdiction and observation. My reports are made to him. Generally speaking,
(2778) my duties were to get instructions from Mr. Hall as to making certain examinations of certain things or for certain purposes of certain papers, books and records, and report to him. The reports that would go out over the signature of Marwick, Mitchell, Peat & Company would be prepared by me and revised by Mr. Hall.

Speaking of "Wrigley's" in short for the Wm. Wrigley Jr. Company, I will say that Mr. Hall was the first person that ever mentioned to me the subject of doing any work at Wrigley's. That is at 5 North Wabash Avenue, where I was. I received instructions from Mr. Hall.

I received what I believed to be an original request on behalf of the L. P. Larson Jr. Company to my employers
2270 and which is shown at pages 237, 238 and 239 of the record of the proceedings now pending before the Master, and which is now shown me. Said document is a request by Mr. Aldrich of the Master to instruct the accountants selected by him to ascertain and report, first, the total production of all gums by the West Virginia Wrigley Company and the Toronto and Australian factories and the number of Doublemint boxes included therein; and second, the difference, if any, in the manufacturing cost as between Doublemint gum and the other leading brands manufactured by the Wrigley Company; third, the items of overhead charge in the several years of the accounting period and whether in the account filed by the Wrigley Company any items of "cost" are repeated in the charge for "overhead"; fourth, that in examining the advertising account the accountants ascertain the dates and amounts, and to whom paid of all moneys purporting to have been expended for advertising and make a separate tabulation of the advertisements
(2779) mentioning Doublemint, whether alone or in conjune-
2270 tion with other brands of gum; fifth, the accountants are requested to ascertain what, if any, additions were made to the capital, factory capacity, number of employes or office force by reason of the manufacture of the Doublemint brand of gum; sixth, also ascertain whether the proportion of U. P. S. coupons redeemed is truly reported in the Wrigley Company filed account; seventh, also the income and excess profit taxes paid and the proper proportion of the same chargeable to the Doublemint brand; eighth, do the 790,488 boxes of gum given away appear in the "Advertising" or other charges against the receipts account of Doublemint?

I was instructed by Mr. Hall to ascertain from the books and records of the Wrigley Company the information contained on the pages just mentioned. I have not been in the employ of the Wm. Wrigley Jr. Company and I didn't known any of the officials or any of the employes prior to the time I started on this work, and I knew nothing about their books and records, or methods of keeping their books and so forth. I don't know that there were any specific instructions given me about how to get this information, or whom I should speak to, or from whom I

was to get the books and record and as to the nature of the inquiries I should make, because Mr. Hall was at home ill with influenza when I started the examination.

Generally speaking, in order to make an investigation of the type that I was to make in this case, I would have
(2780) to have books and records and I would have to get them by interviewing the officials of the company.

2271 The first date I went to the Wrigley Company to do this work must have been December 20, 1918. I am not certain as to the exact date. I think it was in the month of December, anyhow. I had three assistants for a part of a week making a preliminary examination of the advertising, and then it was decided we would not proceed along those lines any further, otherwise I have been absolutely alone. Generally speaking, the request about which I have just testified calls for a tremendous amount of investigation, but the request was modified later. I have not been there daily since December 20, 1918, during the regular working hours, as for about a week or two weeks I was working at some other concern finishing up a job which I had already started before this came up. That digression was under the direction of Mr. Hall.

2272 My examination has required the investigation of many books and records, vouchers and documents. They run into thousands. When I wanted information or books or record or vouchers or papers or documents, I would ask the officers generally speaking, and I would ask Mr. Stanley, Mr. Eckerly, Mr. Cox, Mr. Wrigley, Mr. Nelson Buck and Mr. James A. Cox.

As to how frequently I would make requests for something, for books or vouchers or documents or information, I will say at the start of the examination I had to have assistance practically all of the time. By that I mean I had to be guided about and especially had to have
(2780½) explanations as to how they made up their Double-
2273 mint account. It would be more than a daily occurrence that I would have to go to one or the other of the persons named to get either a book or a paper or documents or information. It was with Mr. Stanley with whom I was thrown into most frequent contact. That was because Mr. Stanley had more to do with the preparation of the account than any other man.

I am not married. I now live at the Illinois Athletic Club. I have lived there since about the first of March

of this year. Before that I lived at the Hyde Park Hotel, 51st Street and Hyde Park Boulevard, which is about six or seven miles from the office of the Wm. Wrigley Jr. Company.

The circumstances under which I joined the Illinois
2274 Athletic Club and my object in so doing were, I was not comfortable at the hotel where I was at and during the time I have been in the Illinois Athletic Club I thought I would like to live there, and the reason because there was such haste was the treasury memberships were going very speedily and I had to act very quickly in order to get into that club. I had been at the club a few times before I joined it. The first man who took me over was Mr. Stanley. We were discussing something in connection with the case and it was about lunch time and he said, "Come along to lunch and we will discuss it further." I told him I could not go to lunch if he paid for it, so he said, "I will get you a guest card." I paid for my own lunch. He might have paid for one or two thereafter. I don't know. I would not swear one way or the other as to whether he ever paid for any of my lunches.
(2781) If he did, it was only on very minor occasions.
2275 When Mr. Stanley first took me to the club, I was discussing with him the preparation of the Doublemint account. My discussion with him had to do entirely with the subject matter that I was investigating and it was the furnishing of information by him that I was asking for. I was asking for that information in order to enable me to intelligently carry out the instructions I had received from Mr. Hall.

Prior to putting in my application at the Illinois Athletic Club and paying my money for a membership, I should say I was at the Club about ten times. On those occasions I went with Mr. Stanley. I went there on those four occasions to discuss the accounting matters with Mr. Stanley and because Mr. Cox and Mr. Nelson Buck and occasionally Mr. Wrigley and Mr. Gill were there and I could get at them all there together and get a better idea of the case than I could anywhere else. It was at a time when they were very busy, partly on the case, and they were working day and night, so I had to take my own chance of getting information. When I say I was talking about the case, I mean I was getting information in

order to intelligently carry on the instructions Mr. Hall had given me.

Before I joined the Club, my visits were purely a matter of convenience to me in order to enable me to get detailed information, and to enable me to further my obligations to my employers. The men who were with me on those occasions were important officials of the
(2782) Wrigley Company and were busy and it was hard to get at all of them. I made the suggestion that I join the club. That suggestion didn't eminate from anyone connected with the Wrigley institution. I did not discuss with Mr. Hall the question of joining that club before I actually joined it, except I told him that I had a chance to join the Illinois Athletic Club and asked him to loan me the money and he did. That was the only discussion
2277 I had with Mr. Hall on that subject. There was no secrecy. I joined the club. There might have been one or two occasions thereafter when some official of the Wrigley Company paid for a meal I had there, but it was not more than two at the most, and for all other meals I myself paid. Those one or two meals were not anything in the nature of a banquet. The talks we had there were merely business talks I have defined. It came about accidentally that they paid for those one or two meals. They were not social meetings by prior invitation. They were all on the spur of the moment.

I said I had one automobile ride with Mr. Eckerly. It
2278 was one Saturday afternoon after we had finished work and Mr. Eckerly was going home and I intended to take a walk, so I asked Mr. Eckerly if he would take me up as far as Lincoln park in his car so I could walk back, and he did that. I think it was at Diversey Boulevard and Lincoln park I got off that time, and I took my walk back. That ride was at my request, and as a matter of fact, I was sitting in the back seat all alone. That is the only time Mr. Eckerly and I ever rode in a machine together. I said Mr. Cox once took me up to the North Side Park to a baseball game. I did not sit with any
(2783) officers or employes of the Wrigley Company on that day. I was setting out from the club to go to the ball park and he was going too, so we met and he said he would give me a lift. He did not pay my admission fee.
2279 I could not say that we were talking about this case on the way. I did not sit with Mr. Cox after we got to

the ball park. I did not sit with any of the Wrigley officers. It was a visit to see the so-called Cubs play baseball.

I said I visited Mr. Stanley at his house twice. As to the circumstances under which I made those visits, I will say that Iam pretty positive that I was waiting for Mr. Stanley to ask him for information after he got back from the court, and after we had worked for a while he said he would get into a row with his wife if he didn't go home, so he told me to come along and I did. I had a meal at Mr. Stanley's house. It was not a dinner. It was a delicatessen luncheon at night. As to whether I thereafter discussed with Mr. Stanley matters that I was investigating under the directions of Mr. Hall, I will say we discussed the particular point I was after, and in fact before we got through I think some friends came in and we played cards after that. My purpose was to finish up
2280 procuring a certain line of information that I was getting.

The second visit to Mr. Stanley's home was similar to the first one. I don't just exactly recall the circumstances. I know that in both cases there was no prepared set meal. That is all I remember about it.

Nothing has even been said by either Mr. Stanley or
(2784) by Mr. Eckerly or by anybody associated with the Wm. Wrigley Jr. Company that I interpreted as an effort to influence my judgment or to have me make a report that was not 100 per cent. or absolutely accurate so far as my skill would permit me. There was never at any time from any source in connection with the Wrigley Company any effort made to bias my judgment.

I never tried to conceal from Mr. Hall or from the Master these social relationships that I have described here. I did not at the time consider them at all indiscreet or improper. I never thought they were important enough to mention.

The first intimation that I received from any source that those relations were the subject of suspicion or
2281 investigation was when Mr. Hall called me over after Mr. Aldrich had made his complaint.

On those numerous occasions when I was at the Illinois Athletic Club, we were not occupying a table in a private room, but we were at a table in the large dining room. I

think the main dining room is probably larger than fifty or seventy-five feet by one hundred feet. It is the main dining room of the Club and is well patronized. It is busy every noon. It was more or less filled with other members or persons who were there eating.

I told Mr. Hall in a general way what I have testified to here today, as much as I could recollect on the spur of the moment. There was no intention on my part at that time to conceal from him anything that I had done. As to whether I then considered what I had done as being strictly proper, I will say I made the statement to
(2785) Mr. Hall at that time that although perhaps my conduct might have been considered indiscreet my report would prove that I had been absolutely fair, so I was not worried very greatly.

(2786) By report I mean the one I had partly made and was
2282 in preparation. I had told my views to Mr. Hall verbally and I believe Mr. Hall had read part of the report.

2283 (Mr. Mayer asked the witness as to whether he meant to intimate by anything he had testified to that he had found anything in the Wrigley Company report as to figures which looked dishonest or looked like an unfair conclusion taken from the books. Mr. Aldrich objected. The master sustained the objection on the ground that he
2284 wanted to confine the matter to the subject then being investigated and further that there was nothing in the testimony of Mr. Gledhill's that would indicate what he had found or whether it was favorable to one or the other.) Mr. Hall said that when Mr. Gledhill spoke to him, Mr. Gledhill told Mr. Hall that he had reference to the principles of accounting involved.

The witness, Mr. Gledhill continued: No intimation was made to me by any one on behalf of Wm. Wrigley Jr. Company that I could find employment with them,
2285 nor any suggestion made to me of their employing me or of giving me any reward or remuneration of any kind or character, directly or indirectly. When Mr. Hall told me I had been indiscreet, I did not explain the thing as fully to Mr. Hall as I have explained it today, but I told him the substance of it. After that interview with Mr. Hall I abandoned those social relations. As to whether I had any more automobile rides with any of the officials or any visits to their homes, I will say that I had no visits to their homes. I think that one Sunday, I don't know

whether this was before or after Mr. Hall's conversation, that I was just setting out of the Illinois Athletic Club on
(2787) a Sunday afternoon to go to the Cub's Park, why Mr. Stanley came out, he had been in the barber shop and said, "I will take you to the end of my street." We had not been together and that was a chance meeting. (Mr. Hall then asked if he could interrupt, and being told he could, he said that when Mr. Gledhill first spoke to Mr. Hall, Mr. Gledhill had told him about that Sunday occasion. The witness continued:)
(2788) We had not been together and that was a chance
2286 meeting. I never visited any of the homes of any other officials of the Wrigley Company other than Mr. Stanley. I did not take any meals with any officials of the Wrigley Company after Mr. Hall expressed his opinion to me. On either one or two occasions some of the Wrigley Company took their meals with me because I was sitting down at the table there and I didn't think they were coming, that was in the evening, I didn't expect any of them over. I do not think this case was even mentioned that evening. I paid for my own meal. I paid for my own room at the club. My reason for moving up to the Illinois Athletic Club was because I was not quite satisfied at the Hyde
2287 Park Hotel. I knew that I should be more comfortable at the club and I could live just as reasonably, if not more so, from the point of financial matters.

While I was at Wrigley's I would start work at eight-thirty to nine o'clock in the morning and I quit at five thirty to six P. M. The club was around the corner from Wrigley's, about a block and a half. It was a convenient abode and a comfortable one.

Ross seems to be sort of office manager of the Wrigley Company or something of that kind as far as I can make out, sort of an assistant office manager to Mr. Eckerly. I came in contact with him pretty frequently when I
2288 needed information to make up my report. After Mr. Hall told me his views, I stopped my social relations
(2789) with him and everybody else, including the employes of the Wrigley Company.

I am on a fixed annual salary. My remuneration is in no way dependent upon the nature of the reports I may make, except, of course, in so far as I may show skill or lack of skill. I made the statement to the effect that the Larson Company had detectives on me after Mr.

Hall spoke to me on the subject. It was after that conversation I assumed the Larson Company had detectives on me. I had no other information on the subject. I don't know to whom I made that remark. I think it was a friend from Milwaukee, and I might have
2289 made it to one of the Wrigley people. I don't know. I didn't say I tried to hide it. I never made a statement to anybody that I was for the Wrigley Company, and did not care who knew it. I cannot explain how anybody should charge me with having made such a statement. I regard it as part of my regular employment to make a written report in connection with my investigations of the Wrigley records. Such a report has not been finally made. When it has been made,
2290 it will be made after the conference between Mr. Hall and myself. My understanding is that it will be presented to the master. I have not come to any final conclusions as to advertising.

(The master then stated that as he understood Mr. Gledhill, Mr. Gledhill simply reports to Mr. Hall on what Mr. Hall asks him to do, but that any report that may finally be made up will be made by Mr. Hall from these reports, perhaps, and such other investigation as Mr. Hall might make. Mr. Hall, who was present, said the master's understanding was correct and that he, Mr. Hall, had not come to any conclusion yet on any
(2790) point).

I have been in conference with Mr. Hall from time to time since I started on this work at Wrigley's, and would exchange views with him. Mr. Hall would give me his views and instructions as to what to do, and thus would require me making some investigation along lines that I had theretofore not made. That would require my getting new information and new books and new records so that my work there has been continuous.
2291 There was no possible way by which I could have procured the information and made the examination which I was requested to make as shown on record pages 237 and 238 without my having all of the interviews with and getting all of the information which I requested from the various officials of the Wrigley Company. It would be a physical human impossibility to have done it otherwise. A good portion of the time I was employed there Messrs. Stanley and Eckerly were in at-

tendance before Master Morrison. I don't know whether Mr. Wrigley was over here while I was there. Mr. Stanley and Mr. Eckerly are very busy men. They have been very courteous and very helpful in giving me the information. They made no effort to hide any-
2292 thing from me. Nothing whatever was done, either by way of money, promises, or otherwise, to suggest or intimate by word or by deed that they expected any report from me that was not actually according to my honest views.

When I first went there they prepared a room for my own use to enable me to work in privacy. There was no eavesdropping to see what I was doing. I must
(2791) state, however, that for the last month or so there have been two other clerks working in the room with me. The room was plenty large enough, and they were pressed for room. Those clerks have not been in my way nor have they inconvenienced me nor interfered with the progress of my work. They are paying no attention to what I am doing.

By my statement to Mr. Aldrich that the sales were
2293 over-stated, what I mean to imply was that without having checked it by detail, the working details, but merely reasoning from the basis the Wrigley Company had adopted of ascertaining the Doublemint sales, the result would be that the sales were somewhat overstated, in the report as filed. I believe there was a connection between Mr. Stanley's absence from the Wrigley's office and his presence before the master and my two visits to his home. I believe those visits at his home were at times when I could not get him during the day for the purpose of getting the information I needed at the time and I was in a hurry. I have no bias or prejudice whatever in the execution of my work. There was nothing whatever that has occurred in my opinion that disqualifies me from performing the duty I owe to my employer. In fact, any accountant would have to adopt and would come to the conclusions as to matters of detail that I have come to. He may differ from me on matters of principles of accounting merely.
2294 There was an oath administered to me, and the substance of that was that I should faithfully and impartially perform whatever work was assigned to me. I felt there was a responsibility on my part, not only to

my employer, but also to the court. In fact, for the first month I was ultra cautious and I found it didn't
(2792) pay. By that I mean to say that I refused every advance made by the Wrigley Company. They were not advances exactly to help me, but they offered to take me over to the club in a social way for instance. I had refused that, but then for the reasons I have already stated I accepted their invitation on condition I could
2295 pay for my own stuff. I did not regard those advances as being for the purpose of influencing me or anything like that. I feel that nothing has happened either in or out of the court room at any time or place which makes me feel that I cannot make a true and accurate report of that which I have been instructed to do, wholly free from any influence or bias. I have no doubt about the matter whatever. Whatever work I have done and so far as I have made any report, is something which can be checked over by other competent accountants. If there is any inaccuracy in the work I have done, it could easily be detected by a competent auditor.

2295 *Redirect Examination by Mr. Aldrich.*

As to what information I was seeking from Mr. Stanley and the officers of the Wrigley Company that could not be derived from the books, I will say this: This
2296 case is practically in so far as the Doublemint accounting is concerned, built up from sources outside of the regular books, it is practically a synthetic account without reference to the general books, and unless I had known exactly how they built up that account, I could not have done any work whatever.

As to whether I had, in building up the Doublemint account to ascertain the amount of Doublemint produced, the cost of its production, the amount received
(2793) therefor, and then the proper charges to be made against the profits arising from the difference between the cost and the sales or deductions to me made to ascertain the net profits if there were any, I will say I could have gotten that from the books. As to what information not contained in the books I could derive from Mr. Stanley and the other officers of the Wrigley Company, I will say I had to get their theories on which they worked. As to the question as to whether I understood

that I was making an account under the decree and directions in the decree from the books of the company and not from the minds of officers who, in giving the
2297 information to me were unsworn, I will say I do not think that's quite a fair statement. In the first place I have gone into this examination, not in detail as to some parts because that would take a great deal of time, consequently I had to rely more or less upon the officers and test their work both by reason of application of general principles and also by testing the details where I could. In my report now I have not gone through every item on the Wrigley Company books. That would have been a very costly affair.

(Mr. Mayer then drew attention to page 234 of the record where a question of what instructions the master should give the accountants in question was under discussion and where Mr. Mayer pointed out and Mr. Aldrich agreed that the accountants would have to confer with employes of the Wm. Wrigley Jr. Company so far as necessary for them to ask for books and papers and documents, and where the master had added that it was quite common for these accountants to ask a good
(2794) many questions of the bookkeepers and persons in charge of accounts and get such information as they
2298 can; and Mr. Aldrich had said that it was proper for them to do so; and where the master had further said that the accountants were not to take the statement of any of the Wrigley Company employes or officers on any material question without verifying it.)

I understand that the decree gives the master power to appoint accountants to examine and report on the books of the Wm. Wrigley Jr. Company. As to how the Larson Company, if it ever has any occasion to criticize my report, is to determine how much of it is based on the books of the company and how much on the information derived from these visits or conferences with these officials, I will say it will be perfectly evident from the face of the report. As to the question asked me asking me to define just what are the limita-
2299 tions as to the information to be derived from these officers, and which I have been seeking from that source, I will say, the sales we shall not check. I did not give Mr. Stanley any advice about the Wrigley sales or the cost of manufacture, nor the amount received for the

sale of the gum produced. Those things were excluded from the earlier part by a subsequent direction. I could not say whether it was before or after the conversation with Mr. Hall that I gave information to Mr. Stanley about the subject that the amount of sales had in my mind been over-stated. I had to get the information of how they got at their sales because the number of boxes of Doublemint produced and sold are very pertinent to
(2795) the case, it is pertinent to the allocation of over head
2300 and it is pertinent in many other ways. Now, then, manufacturing costs, I might say here that I have taken certain exceptions to that. Probably you would never have found them.

As to why I had to seek information from the officers of the Wrigley Company as to the matters which had been excluded which involved an acceptance on the part of the Larson Company of the figures as to production, cost and receipts from sales, I will say the acceptance of two items didn't relieve me from the necessity of going through every account on the Wrigley books either superficially or in detail, depending upon whether it came within the terms of the acceptance, or not. I want to explain this, that the Wrigley Company has no set of accounts which correspond exactly to manufacturing cost, for instance. They have in the manufacturing cost in the Doublemint case some items which are included in what on their books appear to be over head accounts, and vice versa. And further, it is much easier to check back than to build up from the ground, and that is the reason why I had to make the inquiries. I regarded it as my duty to make an examination of the Wrigley books.
2301 As to what extent, if I was to make a report based upon the Wrigley books, barring directions as to where the books and the vouchers evidencing the transactions therein recorded were to be found, I was dependent upon the officials of the Wrigley Company to make up my report, I will say I still contend I had to find out how they built up their account. Unless I know how they built up their account I cannot criticize it, I cannot apportion the boxes. To apportion the boxes by building up
(2796) a correct Doublemint account would involve the employment of a good many men and would be a tremendous expense.

(Mr. Hall then asked Mr. Aldrich if he could state

something. Mr. Aldrich said, "Certainly." Mr. Hall then said: "In making any examination the quickest way to go at it is by cross-questioning of the officials of the company, getting down and getting their theories and their understanding of the business. Now, if I went in to examine any business, the first thing I would do would be to find out what they knew about that business, bearing in mind that I know nothing about it. Once I get that information then I can go ahead and
2302 do something. I think I ought to make that explanation. Personally, I don't regard a man a good accountant who goes himself and spends days and weeks in digging up information he can get in five or ten minutes in asking a few questions.)

In some respects the theory of the Wrigley Company is evidence in their account as filed in court, and in other respects it is not. I might state there have been discussions between Mr. Hall and myself as to the various items, and I have had to get the Wrigley theories in order to attack them, or criticize them. I have been requested, from time to time, after conferences, to come back with certain information which has necessitated further conferences with the officers. I don't want you
(2797) to get the idea that my work has been confined up to date to getting at the particular questions of our report which will be filed in a comparatively short time, because we are excluding certain things from the pres-
2303 ent investigation pending further instructions, but at the same time I have done certain work along those lines. The information Mr. Hall would direct me to look up in certain directions could be found in the books of the Wrigley Company if the Wrigley Company's officers or employes pointed out where it was contained. The account of the accountant should be derived from the books and not information derived from officers
2304 whose acts are under investigation. The report to be filed here is based on the books, and when it is not based on the books, if there is anything to that effect, the report will show it.

(Mr. Hall interpolated: There is usually more off of the books than on in a great many places.)

I have not argued or discussed with the officers of the Wrigley Company, specifically the merits of their report as they have filed it. I have argued with them. I have

got their theory, and from the nature of my questions they must have a pretty good idea of what theory I am working from, but apart from that I made no statements of any consequence. I have never discussed the account as a whole with them. I might have said a certain section was wrong, or a certain section was right. When I denied on my direct examination that I had expressed any opinion that the Larson demand against the Wrig-
2305 ley Company under the decree of the of the court was blackmail, I added that the Wrigley people had very strong views about the case. I meant by that that they
(2798) thought it a question of principle to fight the case. I have not discussed that subject with them. I heard their expression of views. I can't say I don't know their opinion. Of course I have heard it. I don't say that they have ever used the word "blackmail", or anything like that. I wouldn't say they had ever expressed themselves strongly to me about the merits of the case, directly, but they have in my presence. It was not on occasions of those dinners or luncheons with them at the club. I think that has been in the offices. Neither
2306 Mr. Wrigley nor any other officer of the company have ever stated to me that I could have the use of one of Mr. Wrigley's automobiles at any time I wanted it, and I have never said to anyone that such an offer has been made to me.

Recross Examination by Mr. Mayer.

There is no Doublemint account on the general books of the Wrigley Company. That is to say, there is no separate account kept on the books from which you could tell what the net profits or losses are on that particular brand of gum; but it is possible from an examination of all the books and all the records to segregate the items which will enable one to ascertain whether there were profits or losses, but it would be a tremendous job.

(2799) The Master then asked Mr. Aldrich "Is there any-
2307 thing further on this hearing," to which Mr. Aldrich answered, "No," and Mr. Aldrich also said that he did not intend to put in any other evidence on this subject.

The witness further said:

I am a member of the English Institute of Account-

ing. If I were guilty of breach of professional ethics the penalty of expulsion would be visited on me, and expulsion means disgrace and inability to ever accept any position as accountant with a reputable institution.

"The Master: Now, gentlemen, what is wanted, what shall we do about it anyway?

Mr. Aldrich: I want to see this written out, if the court please, and make up my mind about it. I don't think I shall call any witnesses. I have certain reports as to Mr. Gledhill's actions.

The Master: Then matters may remain as they are until this testimony is written up."

(2800) Wednesday, January 7, 1920,
2308 2:30 o'clock P. M.

(Mr. Reed then objected to the examination of L. P. Larson Jr. and the evidence taken by the Wrigley Company under such examination, to each and every question and answer, both on the grounds stated during the examination and the general objections, stipulations and reservations allowed in reference to said examination and testimony, and each part thereof as and when the same were taken. And also objecting and excepting to said evidence and questions and answers as irrelevant, immaterial incompetent and not justified by, but contrary to, the order of reference in this case and moves to strike said evidence and said examination of L. P. Larson Jr. and each part thereof from the record.

2309 Mr. Mayer then asked the master to overrule the motion on the ground that the matter had been fully argued before and the master had said he would receive the evidence subject to objection.

The master then said he would overrule the motion at the present time and receive the testimony subject to the objection and motion and finally pass upon the question at the final consideration of the case.

(2801) Mr. Mayer then stated he was going to proceed to
2310 examine Mr. Larson. Mr. Reed then said that he objected to the continuation of the examination of Mr. Larson or any other witness for substantially the same purpose and along the same lines as Mr. Larson had theretofore been examined, on the theory that such examination and evidence, and each and every part thereof was immaterial, irrelevant and incompetent and con-

trary to and not authorized by the decree entered in the cause.

The master overruled the objection and said that the evidence would be received subject to the objection.

2311 Mr. Mayer then stated before he began to examine Mr. Larson he wanted to take up a letter written under date of July 9, 1919, to the master by Messrs. Aldrich and Reed wherein they thought the Wrigley Company should be required to pay the cost of Mr. Gledhill's work to the date of the letter; and that Messrs. Marwick, Mitchell, Peat & Company should make the reoprt from examinations conducted as required by the master's directions and as is provided in the decree.

Mr. Reed stated that the matter should rest until Mr. Aldrich was present.

(2802) Mr. Mayer stated that on July 11, 1919 he received 2312 from the Master a copy of a communication addressed to Messrs. Aldrich and Reed, acknowledging receipt of their letter to the Master of July 9, 1919, in which the Master says that Messrs. Aldrich and Reed do not request that the Master take any action then and assumes that they do not expect to ask the Master to act until hearings are resumed in the fall, as it was understood that nothing would be done in the case until after vacation, and that the Master takes their letter to be a notice to Wrigley Company's counsel and the Master of the view that Messrs. Aldrich and Reed take of the Gledhill matter. Mr. Mayer further stated that this is the first time that the parties have met since then and that he and Mr. Lane had prepared a reply and they wanted the reply shown of record so that it never could be claimed (2803) that any rights had been lost by not expressing their views to the master at the first occasion. The master stated that such rights had been observed by calling it to his attention at the first moment, but that he would postpone further consideration of the matter until Mr. Aldrich could be present.)

2313 L. P. LARSON JR. resumed the stand for further direct examination, and testified:

(Mr. Larson was asked as to whether he would get information as to the exact date when the L. P. Larson Jr. Company, the corporation, first began to manufac-

ture any kind of gum. Mr. Reed objected on the grounds which he had last stated. The master overruled the objection, but said that the testimony and all other testimony on that subject would be taken subject to the objections and the motion that Mr. Reed had made that day, and that Mr. Reed need not make objections to each specific objection; that he, the master, would reserve all rights as to future testimony set out in the motion.)

2314 I have not the record with me showing the exact date when the L. P. Larson Jr. Company, the corporation, first began the manufacture of any kind of gum. I have looked it up, but I have not got that with me.

(Mr. Mayer then stated that he wanted the witness to have present at the next session the books of account or records or documents to which the witness' attention had (2804) been theretofore specifically drawn and as to which he had been examined and which he had been requested to produce. Mr. Reed objected on the ground that the request did not specify the records, and there was no obligation to produce records. That it was impossible for the witness to go through the record and pick out everything that had been requested. The objection was overruled, the master stating to Mr. Reed that in Mr. Reed's absence Mr. Larson was asked to produce books, 2315 that he produced some and some he did not; and that there was a pretty distinct understanding that he would get all those things together so that when the hearings were resumed, if they were held to be admissible, that they would be present and ready for use.

Mr. Mayer then drew the master's attention to a letter under date of June 23, 1919, written by Mr. Lane and himself to Mr. Aldrich, as follows: "We request, however, in order to save time when we reconvene, that Mr. Larson immediately file with the master the various statements, documents, books, records and all other papers and information he has been requested on various occasions to produce and which have not as yet been submitted to the master or either of us. We feel, in view of our repeated requests for these documents and the delay which has been occasioned by Mr. Larson's failure to produce them, that they should be on file with the (2805) master and subject to our inspection during the vacation period so that when we resume next autumn we can

proceed more rapidly to bring the present issue to a conclusion."

Mr. Mayer also called attention to the fact that this request had not been complied with, but that on June 25, 1919, a communication had been received by him and Mr. Lane from Messrs. Aldrich and Reed in which they said among other things: "We are unable to see our way to
2316 furnish you with such papers as Mr. Larson has been able to find in answer to the request made upon the record. We do not feel that there is any reasonable ground for criticism of Mr. Larson that he has found it difficult to furnish promptly data relating to matters some years past having, as we think, no relation to the issue covered by the decretal order, and hence it could not have been reasonably expected that they should be required on this hearing. We have asked Mr. Larson to have everything you have asked for ready when we reconvene."

Mr. Mayer then asked the witness whether he had present all of the books, papers, documents and records which he had therefore been requested to produce.

Mr. Reed objected to the question on the same grounds as he had theretofore stated and on the grounds stated in the letter and also because the letter was not specific.)

(2806) The witness continued:

I have not the records with me today which I had at our last hearing. I have examined my books for the purpose of ascertaining the date when the L. P. Larson
2317 Jr. Company first began to manufacture any kind of gum. I learned therefrom the exact date, within thirty days. I don't remember what books I examined for that purpose. I saw some records about the time that we, L. P. Larson Jr. Company or L. P. Larson Jr., first started to manufacture chewing gum, and I saw those records during our last sitting. I do not know where.

2318 (Mr. Mayer asked whether those same records were still in existence, to which Mr. Reed objected, and the master overruled the objection.)

I don't know and cannot say whether those books and papers are still in existence.

(Mr. Mayer then asked the witness whether he knew of any books or records that have been destroyed or lost or stolen or disappeared since the last session before the master. Mr. Reed objected to the question as irrelevant and incompetent. The master overruled the objection.)

I do not know of any books or records that have been so destroyed or lost or stolen or disappeared.

(Mr Mayer then asked the witness whether it was not
(2807) true in so far as the witness had any reason to suppose that the papers the witness saw about the time of the last session before the master were still in existence. Mr. Reed objected to the question on the grounds previously stated and on the ground that the question was leading. The objection was overruled.)

The witness continued:

2319 I can't answer that for the reason that this has been a long time since we had our last sitting, and there was one matter that I think about that was very peculiar, and if that happened after our sitting or during our sitting I don't remember which now, then I will be able to answer that tomorrow. I will give you the date tomorrow. I will answer the question tomorrow. The books or papers or documents that I then examined enabled me to tell about the time that either L. P. Larson Jr. or L. P. Larson Jr. Company started to manufacture chewing gum.

2320 (The master then sustained objections to Mr. Mayer's request that the witness produce the documents from which he could tell when the L. P. Larson Jr. Company or L. P. Larson Jr. first manufactured gum until the witness had first testified as to the time they did begin to manufacture gum.)

I have not the Zulu Manufacturing Company corporate records here.

2321 (A discussion then arose whether Mr. Larson should
2322 be directed to produce the books of the Zulu
2323 Manufacturing Company and whether he had been ordered at a prior hearing to produce them.

(2808) Thereupon Mr. Mayer referred to the argument which had taken place on April 17, 18 and 19, 1919, which argument had arisen over Mr. Aldrich's objection to the
2321 following question, put to the witness, L. P. Larson, Jr.: "How much of your time was devoted to looking after the business of the Zulu Manufacturing Company in the sale of gum vending machines and how much in the sale of match vending machines and how much in the sale of chewing gum? Mr. Mayer also called the attention of the master to his ruling at the conclusion of said argument, which ruling was as follows:

2322 "I have reached the conclusion that it is the duty of the master to take the testimony along this line. The question is whether this testimony has any bearing at all on the situation and it occurs to me that it may have some bearing. The weight to be given to this class of testimony of course is quite another question. It can't be considered very much on the question of admissibility; on their theory of the case they claim that they have a right to show whether or not the Larson Company was in a position, financial or otherwise, to have conducted business co-extensive with their business or to what extent this company was equipped to do a gum business."

(2809) The master finally asked Mr. Larson whether he
2324 did not have all the books that he had before the master on his previous examination at his office or somewhere. The witness said:

I assume they are there. I am reserving myself only on the one thing, that is, our office was gone through one night. The safes were opened and books on the floor when I came over there the next morning. Now, I don't know what night that was, and I didn't find anything missing, however. I found everything I looked for or I thought of, but if any of these papers are gone I will just reserve myself until I can find them.

Tomorrow I will bring here everything that I have previously used here on th ehearing before the master, papers and books and everything else. I said my safes were opened and the papers were on the floor. Somebody had gone through some of our records.

2325 (The master then sustained an objection to the question of Mr. Mayer as to whether the Larson Company didn't have a night watchman, the master stating that if Mr. Larson produced all of the books and papers he had had at the hearing before, the question was immaterial, and that if Mr. Larson failed to produce the books and papers, then Mr. Mayer would have a right to know why.

(2810) (A discussion then arose as to what Mr. Larson had theretofore been requested to produce. Mr. Mayer then read from the record where he had requested a statement of the places where Wintermint gum had first been
2326 sold, and Mr. Aldrich had stated that a statement would be prepared as soon as the Larson Company got time,

thus showing where and when the Larson Company had sold gum, and the amounts.

Mr. Mayer then asked the witness whether he had such a statement. Mr. Reed objected to that on the ground that some statement of that kind had been prepared and
2327 introduced in evidence. The witness said that such a statement had been prepared and had been at the hearing at the last session as to its sales of chewing gum.
2328 (Further discussion then took place as to what Mr. Larson had been requested to produce.

The master said he understood the whole thing was fully understood at the time of the adjournment the previous summer, and that Mr. Aldrich and Mr. Larson were going to prepare the testimony that had been ordered to be produced, of course, not waiving any objection they had made to it.

Mr. Mayer then asked the witness to produce all the things that he had prepared.)

The witness continued:

They are in the record here. As to whether I mean to say that I have not prepared anything since ad-
(2811) journment that is not already in the record, I will say we got eveything we could find and counsel for the Wrigley Company has got everything. I was asked for things on the Zulu Manufacturing Company here that the master told us we didn't have to produce.
2329 (The master then stated to the witness that at the last adjournment it was understood that he was to produce certain information that had been called for, that much of it was mentioned at that time, and that he, the master, thought everybody understood at that time about what it was going to be, and the question now was whether the witness had made any effort to produce that information.)

The witness continued:

Yes, sir, I spent several hundred dollars with an auditor going over the work over there, everything he could find, and over these records, and he told me, "Mr. Larson, you have produced everything you have to produce according to the master's rulings." For instance, now, Mr. Mayer is talking about the first Wintermint sales. The first Wintermint sales we have produced. Now, in statement 121 the statement is headed "Initial sales of Wintermint gum by states during the period from De-

cember, 1913, to August, 1914, inclusive." Now, what more does counsel for the Wrigley company want. As to the request of the counsel for the Wrigley Company for the names of the cities where each sale was made and the date, I will say you have the initial sale.

2330 (Mr. Lane then called attention to the correspondence (2812) between counsel which Mr. Mayer earlier in the session had read into the record and called attention to the fact that Mr. Aldrich had said in that correspondence that he had asked Mr. Larson to have everything counsel for the Wrigley Company had asked for ready when the hearings were resumed. The master said that the question is what Mr. Larson and Mr. Aldrich had done to carry out the understanding, that from the statement Mr. Larson had just made it might be that they were unable to find anything.)

I have the papers here that I had produced when we took our last adjournment. There are photographs of them here,

(The master then told the witness that he wanted him to produce the next morning every book and every paper and every record that he had theretofore produced unless 2331 it had been offered in evidence and was now before the master. The master also stated that he wanted Mr. Larson to produce, the following morning, everything that he had had before the master on any previous occasion, and that if any of it had gone into evidence it would then be discovered, but that would be the quickest way to get at it, that Mr. Larson should also bring in the records which he stated showed when the first sales of Wintermint were made by the L. P. Larson Jr. Company. The master stated that for the present he would not order the witness to produce the books with regard (2813) to the Zulu business. The master told the witness 2332 that he should produce everything that had been before the master and everything that had been called for except the Zulu records, and which he had been ordered to produce.)

The witness continued:

I had an auditor on all that and he went through all those records and he produced everything your Honor ruled I should bring in, and he told me this morning that he had prepared and produced everything that you had ordered me to bring. That auditor is Mr. Inglis. He is

not working for me now. I think I can produce here all the books and records that were produced here on those prior occasions. I have every reason to think so except what I said here a little while ago.

2334 (The master suggested that Mr. Larson bring in, the following morning, all the papers and documents he had had before the master on previous occasions before the last adjournment, and in addition thereto all such statements or information, if any, that he had procured pursuant to request since the last adjournment. In response to this suggestion Mr. Aldrich said that it was all right.

2335 The witness said that he understood what he was to bring in the following morning. Mr. Aldrich stated that the witness had a list of the requests that Mr. Mayer had made, and that he had made a search for everything and

(2814) that he had found some things and failed to find others.)

January 8, 1920, 10:30 a. m.

2336 Mr. Mayer drew attention to the fact that he had on the previous day referred to a letter dated July 9, 1919, from Messrs. Aldrich and Reed to the Master and the Master's reply thereto on July 11th and that Mr. Mayer had prepared a reply and wished to present it at the first and earliest session and postponed doing so at Mr. Reed's request until this day.

(2815) (Mr. Aldrich read into the record a letter dated July

2336 9, 1919, signed by himself and Mr. Reed, which letter is in words and figures as follows:)

2336-2340 "Chicago, July 9, 1919.

Charles B. Morrison, Esq.,
Master in Chancery,
Federal Building,
Chicago.

In *Re* Edward Gledhill.

Dear Sir:

As you know, the decree entered in this cause empowered you to employ chartered accountants and prescribed that if you decided to exercise such powers the persons selected should have no interest in the questions in controversy and required you to administer an oath to them to impartially and faithfully examine all books, orders, shipments, reports, letters and files of said Wm.

2337 Wrigley Jr. Company to ascertain the profits, if any accruing from the sale of Doublemint as contradistinguished from the other brands of gum made by said company during the period, making proportionate deductions for overhead, advertising and other proper expenses, and report the facts for each year embraced in the terms of a decree, etc.

Thus, the character of the persons appointed, their relations to the controversy and the court, their obligations, and to a large extent the form of the report, were carefully defined.

The subject of the exercise of this power by you was discussed at the hearing of December 10, 1918 (R. 224-234). It had been discussed October 16, 1918, but this (2816) discussion was not made a part of the records.

You will see that opposing counsel asked that the master 'satisfy himself that the auditors selected by him are impartial and that they will carry on their investigation impartially, not as a partisan of either party to the litigation, so that whatever conferences such appointee may see fit to have will be with the master alone, or if with any of the parties, it will be only upon notice and in the presence of both parties, and I assume also that whomever you select will be a firm or institution having no affiliations with any of the parties or their counsel.' (R. 226)

To this the master said (R. 227-228)

'I agree with you exactly, Mr. Mayer, that this accountant ought not to be pulled or hauled or directed by either of the parties to this suit or by their counsel; that if either of you want to direct this accounting along certain lines, that you should notify the opposite party and appear before the master and have that matter determined and instructions given to the accountant by the master. Now, does that meet with your approval, Mr. Aldrich?

Mr. Aldrich: It does.'

And later this occurred (R. 230)

'Mr. Aldrich: I want to ask another question of the master. I take it that not only the head men must take the oath that is prescribed in the decree, but that the subordinates should not confer with anybody.'

'The Master: No, and I suppose they should be sworn.

'Mr. Aldrich: Yes, I think they should be sworn.

2338 'Mr. Mayer: We do too. I think the decree requires it.' And (R. 232)

'Mr. Mayer: It seems to me that, inasmuch as the responsibility of deciding this case is on the master, that the master would want to give the instructions to these auditors. I don't mean to intimate that suggestions should not come from either or both sides through the master to them.

'Mr. Aldrich: That's the only place they can come from as I understand it.'

and (R. 233-234)

(2817) 'The Master: I have told both of them already that provisions would be made so that they would be paid along from time to time and I have already impressed upon them that this must be an impartial report, that they represent the court, are in the position of a court officer and under no obligations to either side in this case.

'Mr. Aldrich: And not to confer with either side or any of the employes of either side.

'The Master: I will so instruct them.

'Mr. Mayer: Of course, they will have to confer with employes of the Wm. Wrigley Jr. Company so far as necessary for them to ask for books and papers and documents.

'Mr. Aldrich: Certainly.

'The Master: Well, you have suggested what I was about to say. Now, it is quite common for these accountants to ask a good many questions of the bookkeepers and persons in charge of accounts over there and get such information as they can.

'Mr. Aldrich: It is proper for them to.

'The Master: Yes. I shall say to them, however, that they are not to take their statement on any material question without verifying it.'

In subsequent places in the record the fact that all communications between the parties and these accountants must be through you as master has been emphasized and
2339 made prominent. This was known to the officers of the Wrigley Company as well as to Mr. Larson. Mr. Gledhill knew it, as he had both taken the oath prescribed and had a copy of the record and decree before him.

We do not deem it necessary to make any argument that Mr. Gledhill's conduct and relations with the offi-

cials of the Wrigley Company constitute a clear violation of the conditions and terms of his appointment as defined upon the record by the master and counsel for the respective parties. Nor have we any concern with the question whether he was improperly influenced by his contact with these officials. We are not required to make experiments by awaiting the result of his labors; the conduct and relations shown by the examination of Mr. Gledhill reflects quite as much upon the Wrigley officials as upon Mr. Gledhill. The excuses put into his mouth by
(2818) shrewd, cross-examining counsel do not excuse either the accountant or the Wrigley officials and are in our judgment, in many cases inconsistent with known facts.

The accountant was representing the court, and we recognize that the question is one which primarily must be determined by you.

The monuments are now so well established in this case that no action by an indiscreet or even dishonest accountant can now injure the Larson Company to any great extent, or enable the Wrigley Company to escape a finding that its report filed herein is grossly false in purpose and results.

This fact however does not justify us in passing in silence this manifest violation of the spirit and terms of the employment. The master and the parties are entitled to the impartial statement of the profits arising from the manufacture and sale of Doublemint gum for the period prescribed, based as the decree provides on the records of the company and not upon information derived from officials of the Wrigley Company, gleaned at luncheon or dinner tables or in houses of such officials.

We therefore think the Wrigley Company should be required to pay the cost of Mr. Gledhill's work to this date paid by the Larson Company, and that Messrs. Marwick, Mitchell, Peat & Company should make the report from examinations conducted as required by the master's directions, and as is provided in the decree.

2340 We are sending a copy of this communication to opposing counsel.

Very truly yours,

CHARLES H. ALDRICH,
FRANK F. REED."

CHA.—A.N.P.

(2819) (Mr. Mayer then read into the record the reply to said letter, dated January 7, 1920, signed by himself and Mr. Lane and addressed to the master, said letter is in words and figures as follows:)

2340-42 "Dear Sir:

On July 11, 1919, we received a carbon copy of a letter directed to you, dated July 9, 1919, and signed by Charles H. Aldrich and Frank F. Reed, entitled in *re* Edward Gledhill. We also have carbon copy of your letter of July 11, 1919, directed to Mr. Aldrich and Mr. Reed relative to the same matter, in which you state that you assume that you are not expected to act until the hearings are resumed in the fall, and that it was understood by you that nothing would be done in the case until after vacation; hence our reason for not writing before.

We cannot acquiesce in the position taken by counsel for the Larson Company, for the evidence adduced, and the other facts so far as they have come to our knowledge, show plainly that the only intercourse between Mr. Gledhill and the employes of the Wrigley Company was that necessitated by his employment in the capacity of accountant, and the ordinary amenities of life between
2341 persons constantly thus thrown together by the very nature of this employment. None of the parties have the slightest idea that they were in any way transgressing the limits of propriety in doing what each did; in fact, it is admitted by counsel for the Larson Company that 'the monuments are now so well established in this case that no action by an indiscreet or even dishonest accountant can now injure the Larson Company to any great extent.' The fact plainly is that there is nothing either in the record or within the facts, as we understand them to be, that in any wise justifies any serious criticism against the employes of the Wrigley Company or against the accountant, Gledhill, and we most emphatically assert that nothing has appeared in the record, nor has anything happened so far as we are advised, that would in any way justify the demands made by the Larson Company in their letter of July 9, 1919.

The Wrigley Company has not the slightest desire to profit through any supposed favoritism or friendship on the part of the accountant appointed by the master, nor

to be charged with receiving any benefit, because of any alleged close relationship between the accountant selected by the master and any employes of the Wrigley Com-
(2820) pany. While we emphatically disclaim any liability whatsoever to pay the cost of Mr. Gledhill's work to this date, as suggested by the attorneys for the Larson Company, we are quite willing that the master should select a new, fully qualified accountant, if he thinks it adviseable and give such new accountant explicit directions as to the exact limitations upon just what he may or may not say or do to or with the employes of the Wrigley Company, covering such matters as to whether the new accountant should exchange the ordinary salutations of the day upon meeting or parting from them; whether he should eat meals in the same club or public restaurants at which they may eat; ride upon the same cars, or accept such other slight courtesies as a ride in a carriage or motor if one of the Wrigley employes and the accountant happen to be going in the same direction, and that such accountant should cover the entire ground which Mr. Gledhill has heretofore covered; and if the new accountant, in the duplication of the work covered by Mr. Gledhill, discloses any serious error or falsity of statement in Mr. Gledhill's work, which could reasonably be imputed to bias or favoritism, we are then willing to agree that the Wrigley Company should pay the cost of Mr. Gledhill's work to date. If it is disclosed that Mr. Gledhill's work to date has been honestly and impartially done, the cost of the work done by Mr. Gledhill should, of course, be paid by the Larson Company, and the cost of the new accountant's work should abide the issue of this trial as the cost of Mr. Gledhill's work would have
2342 done if its impartiality had not been questioned by counsel for the Larson Company.

Yours very truly,

ISAAC H. MAYER,
WALLACE R. LANE."

(Mr. Aldrich inquired what counsel referred to by the phrase in the letter "other facts which have come to our knowledge." Mr. Mayer replied that counsel for the Wrigley Company were perfectly willing that their opinion expressed in the letter should be limited to what is of record.

(2821) "The Master: Are you gentlemen calling upon the
2342 master now to decide the question?

Mr. Aldrich: We are not so far as we are concerned.
2343 Mr. Mayer: So far as we are concerned we are perfectly willing to have the master decide it now if he wishes. Mr. Aldrich having made a proposition in his letter or a motion, or whatever you want to call it, of July 9th, we have made a reply."

Mr. Aldrich then said that he, too, was satisfied to have the Master's opinion on the record as made, and that the Master could use his own discretion as to when he should decide it. The Master then said he was not prepared to
2344 decide it now, and Mr. Aldrich joined with Mr. Mayer in a request for an early decision on the subject.

"The Master: What do you gentlemen expect me to decide when I come to decide it, that is, what question is there for me to decide?

Mr. Aldrich: Well, I think my letter to you raised an issue. I think Mr. Mayer is right in that, and I had not expected Mr. Mayer or Mr. Lane to become an apologist for what that record shows, but if not apologists, to defend it. Now, that's one question you will have to decide, I take it.

The Master: Yes, and the question whether they should be required to pay for his services.

Mr. Aldrich: Yes, and whether his conduct was such as they set out in their answer to my letter.

The Master: Well, neither of these questions requires immediate decision. We will go ahead with it and later along I will take the matter up."

(2822) January 8, 1920, 2:00 P. M.

2345 L. P. LARSON resumed the stand for further examination on direct by Mr. Mayer, and testified:

I have all the books and documents the master required me to bring over here with me and any additional statements that have been requested for me to bring here, I have none other. As for our reports, we have made a complete statement of all we have found. I mean that since adjournment last June I prepared no additional statements or information pursuant to requests
2346 made of me. I now say the statements that I have here-

tofore prepared and which have been offered in evidence are the only statements which have been prepared by me, and I contend that we have brought in a full report of all the requests of what we have been able to find. I have made no additional or new ones since the adjournment last June. I may add we have made certain statements
2347 in an accounting period that by the master's rulings we were not to supposed to submit, therefore we did not
(2823) hand them in, and that is that we were not supposed to make an accounting of our financial condition after January 1, 1913. As to whether I have prepared a statement showing when I first sold Wintermint gum and the different places at which it was sold, and the dates of the first sale in each place, I will state that I furnished a
2348 statement of states as to where we sold, and I said we sold to jobbers who sell throughout the states. May be some jobber covers four or five states. I am referring in part to Larson Exhibit 93 for identification which is now shown me. I also refer to Larson Exhibit 121 on page
2349 2100 of the record. I was not requested by the master to get the name of each city where the first sale was made. I have records which will show that. We have records showing where the first sale in actual states were made, which was all requested by the master on account that we sold to jobbers who would distribute over the state.

As to whether there is anything on Exhibit 93 or Exhibit 121 to indicate the localities in which the sales were
2350 made for that state, I will answer yes, sir. I have books which will show when I first sold Wintermint gum, and every sale made thereafter, and the dates of the sale and the names of the person to whom sold, and the places where sold. I believe I have those books here now. I kept those books with reference to the places at which sales were made while billing the jobber whom we sold to, and also listing the town after his name. There is no
2351 other way by which I can tell at which places we sold gum excepting by looking at the names of the jobbers. In 1911, 1912, 1913 and 1914, when we got orders they came
(2824) in writing. Those orders have not been preserved that I know of. They have not been destroyed that I know of. After the order had been received by us we entered it on the books of the L. P. Larson Jr. Company. The name of the book on which that order was first entered was the merchandise journal. I have a merchandise

journal here. I don't know exactly what period it covers
2352 without looking it up. I have a merchandise journal here covering January, 1913, to March, 1914. At that time the order came to our house, either on the salesman's order blank or on the jobber's stationery. I don't know what has become of the original of those orders. They are in existence so far as I know. Those original order slips were posted first to the sales journal, being the books heretofore described as the merchandise journal. I have got a sales journal here.

2353 The date of the first entry in the sales journal that is now in my hand is January 2, 1913, and the date of the last entry is March 31, 1914.

(Said sales journal was marked for identification Larson Exhibit 131.)

I have not here any of the orders that I got from the jobbers or from our sales people. Larson Exhibit 131 for identification shows the party to whom the gum was sold, and the town and the state and the amount of merchandise sold and the date. It also shows the kind of merchandise sold and the brands. The bookkeeper kept
2354 the sales journal, Exhibit 131. I don't remember his name. That book, Exhibit 131 was kept in due course of business by the L. P. Larson Jr. Company. It is not a
(2825) book kept by the Zulu Manufacturing Company or in the business which I personally conducted on my own behalf. There are no entries on that sales journal in my handwriting that I know of. I don't recall the name of the bookkeeper that made the entries or kept that book. The entries on the sales journal, Exhibit 131, were posted to some other book. That is a ledger. The ledger is where the accounts are kept with the jobbers, the aggregate amounts. I haven't that ledger here. I haven't any ledger here of the L. P. Larson Jr. Company or of the Zulu Manufacturing Company or that was kept by me in connec-
2355 tion with my own personal individual business. The ledger to which entries in the sales journal were posted contain information as to the indebtedness of the jobber to us. It would not show what the indebtedness was for. It would merely show the name of the customer, and perhaps his address, and the dates of the charges made against him, and the amounts of the charges and also the dates and the amounts of credit. That is all that would be shown on that ledger. The merchandise journal

I referred to a few minutes ago, and which I said started on January 1, 1913, and ran up to March 1, 1914, was a book showing sales of merchandise made by the L. P. Larson Jr. Company. The book which has been marked for identification Exhibit 131 I refer to as a merchandise
2356 journal. That's the same book that I afterwards referred to as a sales journal. I guess the only records kept which would show what my sales are, to whom they are made, when they were made, and the location of the buyers are these order slips and the sales journal to which
(2826) I have referred. The localities in which our business is done is shown on the ledger. We also have files of lists of names of our customers; that is, today I know we have. I don't know what we had in 1913.

The first sale of Wintermint was in December, 1913. (Mr. Mayer asked the witness to turn to the entry in the book showing the first sale of Wintermint gum.)

2357 The book I have just been examining should show that first sale. It says, "Sales of December, 1913." But I have the shipping records here of each shipment and it will be easier for me to find the sales of that month from it than going through that whole book of the month of December. The book I have just been examining is Ex-
2358 hibit 131. It shows the first sale of Wintermint.

(Mr. Mayer asked that the record show that the witness was conferring with his counsel.)

Exhibit 131 shows the first sale at page 281.

(Mr. Aldrich asked Mr. Mayer whether he wanted the name of the customer. Mr. Mayer then told the witness to leave out the name of the customer and read everything else pertaining to that item. The witness again conferred with Mr. Aldrich before answering.)

Excepting the name of the customer, everything in that book pertaining to the first sale of Wintermint gum
2359 reads: "Fremont, Nebraska, 100 box Pepto." and two lines scratched through the word Pepto, and the word Wintermint written thereover, $40.00". The date is December 19, 1913. There are no other erasures or interlineations in connection with that item than that which I have referred to. the Word Pepto, which I say was erased was written in the bookkeeper's handwriting. That word is in the same handwriting as the balance of the
(2827) entry. The bookkeeper wrote the word Wintermint over the erasure "Pepto." I believe the entire entry is

2360 in one person's handwriting. On Mr. Aldrich's advice I am willing to let counsel for the Wrigley Company see that entry. There is nothing on that page on which that
(2828) item which I have just read appears to indicate the year in which it was made. The December 19th item appears on page 281 of Exhibit 131. I can tell that the entry of December 19 was of the year 1913 because on the top of page 286 it reads "January, 1914". Referring to that entry, "Fremont, Nebraska, 100 box", the figures "80" appear before the name "Fremont Botl. Wks." I
2361 don't know what those figures stand for. The letter "F" after the words "Fremont Botl. Wks." is the post mark showing it has been posted to the ledger. That is the ledger to which I have already referred. "F" does not refer to the number of the ledger or describe the ledger. It stands for the head of the concern,—Fremont—F. All the letter F means is that the account has been posted or entered into the ledger. We do not use the letter F only throughout that journal to indicate the items were posted to the journal. We use other letters. The first letter of the jobber's name or the corporate name. That letter F was intended to mean nothing except the fact
2362 that the entry had been posted into the ledger. That is all. I have no idea what the figures "80" mean. This book, 131, has on the outside on the back part: "Journal No. 1 Larson Sales January 1, 1913, to March 31, 1914." I have already stated that the book was used by the L. P. Larson Jr. Company as one of its regular corporate books of account. The only headings in that journal were the months of the year and the year itself. As to the request that I read the entire heading on page 281 on which that December 19th entry appears, I will say that there is no year heading or month heading on this particular page. Well, if you call it a heading at the top of the col-
(2829) umns, the word "charges" appears and "Pepto.", "Sundries" and "Adv." which stand for advertising.

That sales journal was divided into columns and headings as I have just now read. The headings of all the columns that appear on page 281 of Exhibit 131 are: Charges, Pepto., Sundries and Adv., which stands for advertising.

That journal was subdivided into columns bearing those headings. The different columns under which appears the information that I have read into the record

under date of December 19, 1913, from page 281 are Charges and Sundries. You see, we didn't have any Wintermint column and we put it under the Sundries column. Otherwise it would have gone into the Peptomint column.

I haven't any order slips here. I haven't here the or-
2364 der or order slip for that 100 boxes of Wintermint referred to on page 281. In other words I have not here the original order or slip or whatever it may be called for those 100 boxes of Wintermint that constitute the first sale ever made of that Wintermint brand. I have something here to show that I shipped that 100 boxes of Wintermint. It is the shipping slip which I have just produced. It purports to show the shipment of that 100 boxes of Wintermint. That slip is one of what looks like several hundred that I have. Those slips are shipping
2365 orders to the shipping department. Those orders are given by the L. P. Larson Jr. Company to the shipping department of the L. P. Larson Jr. Company.

I do not own any stock in the Fremont Bottle Works. I cannot say as to whether my father was ever interested
(2830) in the Fremont Bottling Works. I know he was connected later on with the Marr-Hein Candy Company, which is the same thing today—no, it is not either—but the Fremont Bottling Works later on went into the candy business under the name of the Marr-Hein Candy Company, and my father is interested in the candy business with them, but I don't think he has got any stock with the Fremont Bottling Works. My brother-in-law, Charles
2366 Marr, was interested in the Fremont Bottling Works. He married my sister. I believe he was connected with the Fremont Bottling Works in December 1913, and on December 19, 1913. He was a stockholder. I believe he was one of the important heavy stockholders. One of the principle owners. I don't think any other of my relatives was connected with the Fremont Bottling Works on December 19, 1913. My brother-in-law was not the principle owner. His father was.

(2831) (Mr. Mayer then asked the witness when he next made a sale to the Fremont Bottling Works of Wintermint. Mr. Aldrich objected to the question, and the objection was overruled, the master stating that he thought the Wrigley Company had a right to show whether the sale was an accidental one or one made because of family

relations or whether or not it was a part of a series of sales or of the establishing of business in Fremont.)

2367 That was the first sale we made of Wintermint gum. We had just gotten our labels out. I do not know when we made the next sale of Wintermint. I have not got those records in my head. (Mr. Mayer then asked the witness to look that information up.) I have not my ledger here.

(2832) (Mr. Mayer then asked the witness to have at the
2368 hearing on the next day the ledger of the L. P. Larson Jr. Company that was kept by it from January 1, 1913, to January 1, 1915. The witness said he could not produce it, on account of its size. Mr. Aldrich stated that the books would not be produced unless the master compelled
2369 it, that he was not objecting to the book on the ground that it was unwieldy and voluminous, but that he was objecting to it on the ground that the court had no jurisdiction to go into any such examination of the Larson Company's affairs, and that he would now ask the master to certify the question to the court. Mr. Mayer said that in order to make some progress he would pass the question for a minute and perhaps he could get the information some other way.)

I don't know what was the date of our second sale of Wintermint gum.

2370 As to the request that I examine the journal marked 131 and give the date, I will say I have stated a hundred times that that December 19, 1913, sale was the only Wintermint sale made in 1913. I don't remember whether in 1913 the L. P. Larson Jr. Company was dealing in mints. A substantial part of the business of the L. P. Larson Jr.
2371 Company has not been dealing in mints. At least not recently. I do not think the L. P. Larson Jr. Company was selling mints in December, 1913. It was all gum.

As to whether there is anything on that journal entry
(2833) on page 231 to indicate whether the sale of one hundred boxes was of Wintermint gum or of Wintermint mints, I will say there is 100 boxes of Wintermint and that is chewing gum for the reason that we didn't go into the mint business before—manufacturing our own mints or selling our own mints until after that time. We first handled what they call square mints for a party here in town. We sold some mints. I don't know the date. I don't know whether we did that in 1913 or not. I have

my cash book here for the year 1913. That's Larson Ex-
2372 hibit 73 for identification. That's the combined cash book and journal of the L. P. Larson Jr. Company, and was the first one ever used by it. I will go through it and try and find the entry showing the one hundred boxes of Wintermint sold to the Fremont Bottling Works. I haven't got the cash book here for December, 1913, as Larson Exhibit 73 for identification is from July 28, 1911, to September 30, 1913. I haven't any later cash book here. I haven't the ledger here at all. I will object to producing the cash book and ledger account showing the
2373 payment for that first Wintermint sale. I do not have to do that.

(Mr. Aldrich stated that the court had rules on that at page 2183. Mr. Mayer read page 2183, which showed that the master had ruled that Mr. Mayer might not go into the witness' financial condition subsequent to January 1, 1913. Mr. Mayer said that he was not asking the witness at the present time about his financial condition, that he was asking him whether that 100 box sale was a legitimate transaction and went out and was actually paid for.)

(2834) I have before me what I said was the shipping slip.
2374 One line on it has in print the following: "Terms". I cannot read what it says on the slip with respect to terms.

(Mr. Mayer then asked the witness to produce, the next day, the cash book and ledger showing the payment made for that first sale of 100 boxes of Wintermint gum. Mr. Aldrich said the witness would not produce it unless the master ordered him to, as the Larson Company was objecting to the materiality and competency and jurisdic-
2375 tion of the master. The master overruled the objection and directed that the books requested be produced before the master the next day for such use as it might then develop the Wrigley Company had the right to make of them. Mr. Mayer then asked the witness to bring in, the next morning, any other records that would show whether or not that first order of Wintermint gum was paid for and how it was paid for, to which Mr. Aldrich added that he wanted to suggest also that a list be made of the names of the towns where these first sales were made, as he wanted to comply with the order of court that has been made. Mr. Mayer added that he wanted the amount included, too. Mr. Mayer then requested the witness to

look over Exhibit 131 and find the entry pertaining to the second sale of Wintermint gum. The master ruled
2376 the witness should do that. Mr. Mayer also asked the witness to produce, the next day, the order slip for the
(2835) first sale of Wintermint gum.)

The witness continued.

We have no order slips of that, Mr. Mayer. The first shipment of Wintermint gum was made to the Fremont Bottling Works as we had just received our labels and we had received an order for one case of Peptomint gum from them and I took the liberty, because of our relations
2377 to this concern, of shipping them a case of Wintermint gum in place of the Peptomint gum. And that is how the entry shows up where it is scratched off Peptomint. I had gotten the labels and we had wrapped up a case of it and I exchanged the order for Wintermint.

(Mr. Mayer then requested the witness to have present, the next day, the order from the Fremont Bottling Works for the 100 boxes of Peptomint or whatever the amount of Peptomint gum was in that order, and which the witness took the liberty of filling by sending Wintermint gum, and also any correspondence on that subject. Mr. Aldrich advised the witness to produce what Mr. Mayer had requested, as the master had ruled on that, and he was going to bring up a matter after a while that he could go to the court on. The master then stated it was his ruling that Mr. Larson should furnish the information.)

2378 I have made a memorandum of what Mr. Mayer has requested me to produce. I cannot answer the question as to when the second sale of Wintermint gum was made. I am looking that up. As I say, our sales here only mention the boxes and I will have to go from item to item.
(2836) In some places in that book the brands are mentioned. No other brands are mentioned there than Peptomint so far as I have gone. I don't know whether the headings on all of the pages except Exhibit 161 are the same as they are on page 281. I will look at it as I examine the book. I want to correct one statement I made, viz., that the only sale of Peptomint was in Nebraska. I remember we made sales in Illinois of Wintermint in December, 1913.

(Mr. Mayer stated that he was going to ask the witness to point out his record of those sales from his books. The master said that Mr. Mayer might do that the next day,

and Mr. Larson stated that he understood Mr. Mayer's request.)

The witness continued:

2379 I have been instructed to bring the first sales of Wintermint where the sale was made, not only the states, but the cities and towns of the first sales. I could not get all that information by tomorrow. I will get that as to the first sale which I made in Fremont. I understand that all the records relating to that, showing payment and any correspondence and everything in my office relating to that particular transaction is wanted.

(The master then instructed the witness to bring that information in the next day, but stated that as to the dates in the other states, he would have more time for

2380 that. Mr. Mayer then stated that when in the record he said he would drop a matter for the moment that that did not waive any right of his to insist upon the witness producing all the things he had been asked to produce, and that he would insist that the witness produce all the things that he had been requested to produce.)

(2837) January 9, 1920.
10:30 A. M.

2381 (Mr. Aldrich stated to the master that the L. P. Larson Jr. Company had decided to decline for the present at least to furnish any more information demanded by opposing counsel in the hearing; that while he recognized to the fullest extent that all questions as to matters within the master's jurisdiction should be reserved until the coming in of the master's report and then submitted to the consideration of court, nevertheless, as previously indicated, it was the view of counsel for the Larson Company that no part of the inquiry into the business of the L. P. Larson Jr. Company was within the jurisdiction of the master. That the master's authority was limited by the decretal order, and the investigation was not within that authority.

2382 Mr. Mayer then stated that he would proceed to put some questions to the witness, L. P. Larson, Jr., and that when it got to a point where he could not proceed without the production of the documents and information which Mr. Aldrich said would not be produced, such steps would be taken as Mr. Mayer thought justice demanded.)

L. P. LARSON, JR., resumed stand for further direct examination by Mr. Mayer)

(Mr. Mayer then asked Mr. Larson whether he had produced his cash book and ledger showing the payment for
(2838) the order of December 19, 1913, from the Fremont Bottle Works, as requested at ths adjournment the pre-
2383 vious night. Mr. Aldrich instructed the witness to decline to answer the question. The master thereupon instructed the witness to answer the question, and the witness said he declined. The witness then stated that he had brought in the books according to the master's instructions. Whereupon Mr. Mayer asked him to produce that part of the cash book which had shown payment, if there was a payment, made for the 100 boxes of Wintermint gum which the witness testified the day before were sold to the Fremont Bottle Works December 19, 1913.

Mr. Aldrich then instructed the witness to decline to produce any further information about L. P. Larson Jr.'s business. The witness then stated that he declined to give any further information pertaining to the business of L. P. Larson Jr. or the L. P. Larson Jr. Company or
2385 to the Zulu Manufacturing business. Said his refusals were on the advice of counsel and not based at all on the ground that any answer might intend to incriminate him.
2386 The witness further stated that on the advice of his counsel he now refused to furnish any information or produce any documents or records or books, which information, documents records and books the master had ruled should be properly furnished at the hearings,
(2839) whether such information, books, records and documents pertain to the business of L. P. Larson Jr. personally and individually or whether they pertain to the business of the L. P. Larson Jr. Company or whether they pertain to the business of the Zulu Manufacturing Company. That such refusal was not based in any way
2387 upon a fear of being incriminated by anything that the master had ordered to produce, and that the only reason for his refusal to furnish any further information or produce any books or documents of the type described was because his counsel advised him to so refuse. The master thereupon directed the witness to produce before him for use on the hearing the books and records and papers that

the master had heretofore directed him to produce whether or not the same have already been or have not been produced.

Mr. Aldrich instructed the witness to decline to comply with the master's request so that the matter could be presented to the higher court. Whereupon the witness refused to comply with the master's request, said his refusal was not based at all on any ground that it might intend to incriminate himself. His only reason for refusal was because the counsel had advised him to refuse.

2388 The master then directed the witness to answer all questions which had been put to him by counsel for the Wrigley Company that morning, which he had on advise of counsel declined to answer. The witness said he refused to answer on the advice of his counsel. He further stated the refusal was not based in any way upon a fear of being incriminated if he should answer the questions."

(2840) April 20, 1920.

2390 (Mr. Aldrich made a motion of which he had given notice to counsel for the Wrigley Company) that the master enter an order permitting the L. P. Larson Jr. Company's accountants, Touche, Niven & Company, to make an examination of the papers, books and accounts of the Wm. Wrigley Jr. Company for the accounting period touching the matters in issue and allowing them to enter upon such examination at once, and that the usual order be entered directing the Wm. Wrigley Jr. Company to afford full facilities for such examination and to produce for the use of said accountants all books, papers and documents, letters and sales slips pertaining to the manufacture and sale of Doublemint during the accounting period.

2391 Mr. Aldrich stated that the motion was based upon the fact that practically all the work done by the accountants appointed by the master under the terms of the accounting decree had been done by Edward Gledhill, chief accountant for Messrs. Marwick, Mitchell, Peat & Co., and that by reason of the record made upon the investigation of Mr. Gledhill's conduct, counsel for the L. P. Larson Jr. Company were of the opinion that any report based upon Mr. Gledhill's work was subject to suspicion, and that they were unwilling to accept any report which was based

(2841) upon Mr. Gledhill's work without independent verifica-

tion, and they wish to avoid the delay incident to an examination for such verification after the report of the court's accountants had been received.

2392 Mr. Aldrich stated that his motion was also based on the fact that th elast clause of the accounting decree under which the master was proceding gave the Larson Company the right which it now sought, and that the master had already ruled favorably thereto when he ruled that Edward R. Burt & Company should be permitted to examine the books for the ascertainment of certain facts. Mr. Aldrich stated that it was understood that such examination by Touche, Niven & Company should be at the expense of the L. P. Larson Jr. Company in the first instance, its counsel, however, reserving the right to move the master and the court, thereafter in the premises in view of the disregard of the conditions governing the appointment of Messrs. Marwick, Mitchell, Peat & Company and their assistants and employes by executive officers of the Wm. Wrigley Jr. Company and the clear agreements made in their presence and behalf by their counsel with reference thereto.

2393 In view of the fact that Mr. Mayer was not present, owing to court engagements, the motion was not taken up at that time.)

(2842) April 23, 1920. 10:00 o'clock A. M.

2394 (Arguments were made on Mr. Aldrich's motion made at the previous session for the appointment of Touche, Niven & Company. During the argument counsel for the Wrigley Company stated they wished to examine a representative of Touche, Niven and desired time to make inquiries as to their standing and reputation.)

2395 May 5, 1920. 10:00 A. M.

CHARLES RUPERT WHITWORTH, a witness produced by the L. P. Larson Jr. Company, having been first duly sworn, testified on direct examination by Mr. Mayer as follows:

My name is Charles Rupert Whitworth. I am 36 years old. I live in Glencoe. I have lived there for three years. I am a resident partner of Touche, Niven & Company.

Members of that firm are John Touche, Andrew W. Tait, John B. Niven, Herbert C. Freeman, Francis J. Clowes, Henry E. Mendes and myself. Mr. Touche and Mr. Tait live in London, England; Mr. Niven lives in Montclair, New Jersey. Mr. Freeman resides in New York City, that is Van Cortland Park. Mr. Clowes resides in New York City. Mr. Mendes in Cleveland. I have lived in Illinois ten years. I am a citizen of the United States. I have been practicing as an accountant for twenty years.

I went to London to be articled and passed examination as a chartered accountant and came over to America in 1906. I have taken the degree of certified public accountant since I came here and have been on a staff or a
(2843) member of two of the largest firms in this country. Before going to Touche, Niven & Company I was with Price, Waterhouse & Company for seven years, and I have now also completed seven years with Touche, Niven.
2397 I have been a partner a little more than a year, since January 1, 1919. I was with the six years before.

I understand that I am testifying now in the litigation between Wm. Wrigley Jr. Company, the gum manufacturers, and the L. P. Larson Jr. Company, manufacturers of gum and mints. I suppose it is about a month, possibly six weeks ago, I am not sure of the exact date, that I first heard of this litigation. I heard of it from Mr. J. M. Hoyt. He is a financier, I think, a member of the firm of Hoyt & Little. I understand he is a friend of Mr. Larson. I have known Mr. Hoyt and Mr. Little for pos-
2398 sibly five years. Hoyt and Little are promoters. They are interested in various companies. I think Mr. Hoyt is an officer of the Central Bond & Mortgage Company. That's how I more particularly know him. We have audited those accounts.

(Mr. Mayer then asked whether the witness knew if Hoyt and Little had any financial dealings with the L. P. Larson Jr. Company. Mr. Aldrich objected to the question, and the question was sustained.

2399 Mr. Mayer then asked the witness what the first interview was or what was said by Mr. Hoyt in connection with the subject matter when it was first mentioned to the witness. Mr. Aldrich objected to the question.

(The objection was overruled.)

(2844) The witness continued:

Mr. Hoyt, as I remember, said he wanted to introduce

me to Mr. Larson because Mr. Larson needed a firm of accountants in a case against the Wrigley Company. Mr. Larson was not present at the time. I went over the next
2400 day and Mr. Hoyt went into the subject of the case. That is, in a general way he said, As I remember it that Larson & Company had been awarded damages against Wrigley & Company and there was a firm of accountants employed in the matter, that Mr. Larson was not satisfied with the way in which that had been conducted, and that the counsel for Mr. Larson was going to apply to have another firm of accountants to check up on the figures in order to see that the report was right in all respects, to see if we agreed with their views or in what manner we might disagree and then report to them. That's the gist of the conversation as I remember it. It was some five or six weeks ago now. I think I have stated the entire substance of any conversation with Mr. Hoyt or with any member of Hoyt & Little's firm with respect to this examination. There was something said on the subject of
2401 reimbursing me or paying me for my services. I understand that the Larson Jr. Company are paying me for my services. We are looking to them, if we are employed, to render our bill to, and to receive reimbursement from them. Mr. Aldrich made the arrangements. If I might say, Mr. Hoyt said Mr. Larson would be in the next day to take me to Mr. Aldrich who was counsel, and the matter would be discussed there, and I think I came over to see you probably the next day, Mr. Aldrich, and you told me
(2845) what your purpose was and that Larson & Company would pay the charges when the appointment had been made and the work had been completed. At that time he explained that he would have to appear before the master to have the appointment of another firm of accountants made. There was no arrangement by which Hoyt & Little
2402 or anybody connected with them are to pay us for our services. I have received no directions or instructions from them as to the nature of my work. By Mr. Larsn, I mean L. P. Larson Jr. Mr. Aldrich and Mr. Larson arranged with me that I was to receive my pay from the L. P. Larson Jr. Company when my work was completed. I don't know that we have ever gone so far as to come to an understanding that I am to render monthly accounts and get my pay from month to month. We were told the account would be guaranteed or paid by Mr. Larson. We

never made an arrangement about sending monthly bills. Sometimes, if the work is long, we do send monthly bills, but if it is over in a short period, it is our practice to send a bill when the work is completed. Just how long this examination may take I have not the slightest idea at present. I don't mean to say that an arrangement had been made that I am to be paid when the work is com-
2403 pleted. The understanding is that the work will be paid for when I am not definite on it. My understanding is that it is to be paid on the usual terms. Those usual terms are the per diem rate. There is no contingency about our payment. I never worked on a contingent basis in my life for that company. I don't know whether I have stated to Mr. Aldrich or Mr. Larson what our per diem is
(2846) or will be. They know what our regular rates are. I told them. They said they would pay our regular fees.
2404 Those rates are the same as other accountants'. Accountants' rates are more or less uniform. No one has guaranteed the payment of our bill, in the ordinary sense. Mr. Aldrich and Mr. Larson both made the statement that the account will be paid by Mr. Aldrich's client.
2406 I understand that I am employed for no other purpose except to find out whether the account filed before the master has been correctly prepared or not. I do not know whether any part of the information which I am seeking is desired by Hoyt, Little & Company in connection with any stock transactions and the promotion of any stocks or bonds. I have not examined the accounts that the Wm.
2408 Wrigley Jr. Company has filed before the master in this case.

Cross-Examination by Mr. Reed.

All of the members of my firm are chartered or certified accountants.

Direct Examination (Continued) by Mr. Mayer.

I have heard of the American Chicle Company. I sup-
2409 posed it to be one of the largest gum manufacturing concerns in the country. I have never done any work for it and no member of my firm has ever done any work for
2410 that company, to my knowledge. Neither myself or any

of my partners or my firm are in the employ or do auditing for any concerns that compete with the Wm. Wrigley
(2847) Jr. Company. To some extent I personally am going
2411 to make this examination. I expect to have some assistance. To some extent I intend myself to attend to the physical examination of the Wrigley Company's books, papers and records. As to the balance, I expect
2412 some one else to do it. The man I intend to send over will be a member of our regular staff. The same man will continue the investigation all the way through. The man
2413 who will be in charge will be a certified public accountant, and he is in our confidence and we have absolute reliance in him. All our employes occupy that position.

(No objection was made to the granting of the motion of the L. P. Larson Jr. Company for the order permitting its accountants, Touche, Niven & Company, to make an examination of the books, papers and accounts of the Wm. Wrigley Jr. Company, and so forth, and the motion was granted.)

2414 Thursday, May 27, 1920. 10:00 A. M.

2415 (Mr. Mayer stated that representative of Touche, Niven & Company had inquired of the Wm. Wrigley Jr. Company whether he could have the Wm. Wrigley Jr. Company sheets for the advertising account; that thereupon the Wrigley people asked Mr. Lane and Mr. Mayer what the master's directions were with reference to permitting Touche, Niven & Company to examine the records and books, and Mr. Mayer and Mr. Lane told them that it did not in any way refer to the question of working sheets,
(2848) and they should tell Mr. Vincent that it is a matter that should be brought to the attention of the master.

Mr. Mayer hen stated that he received a letter from Mr. Aldrich dated May 25, 1920, to the effect that Mr. Vincent had asked Mr. Aldrich to procure for his examination the working sheets from which the advertising account as stated in the Wrigley account as filed was made up; that he had then telephoned Mr. Aldrich that the matter should be taken up before the master; that is, Mr. Mayer telephoned. That all Mr. Mayer wanted was
2416 to have the matter made a matter of record, and that inasmuch as the order of the master did not refer to working sheets, counsel for the Wrigley Company thought

it proper that the records show that the Larson Company wanted those working sheets, and that the Wrigley Company was perfectly willing to give the working sheets to them.

Mr. Aldrich then read into the record the letter of May 25, 1920, to which Mr. Mayer had referred, and said letter is as follows:

2417 Gentlemen:

Mr. Vincent, of Touche, Niven & Company, has asked me to procure for his examination the working sheets upon which the advertising account as stated in the Wrigley account filed was made up. This has nothing to do with the theory upon which the advertising account should be made up, but he wants these for purposes of his work. Will you kindly see that they are furnished him. Your early answer will greatly oblige,

Yours very truly,

CHARLES H. ALDRICH."

(2849) (Mr. Aldrich then stated that when he had spoken to Mr. Mayer, Mr. Mayer had not indicated one way or the other as to his disposition in the matter, but Mr. Mayer had said he would prefer to take the matter up before the master.

2418 Mr. Aldrich further stated that the necessity of Mr. Vincent having the working sheets was obvious, as it appeared in the account filed by the Wrigley Company, the Doublemint account is an account that has been dug out of two large accounts that are kept upon the books of the Wrigley Company and one is an account of advertising and the other is an account pertaining to advertising or something of that kind, and that Touche, Niven & Company can't ascertain whether that account is true or whether the apportionment is right without examining the working sheets and without examining also the different advertising that is embraced in the advertising total charge and making measurements probably before they get through.

2419 Mr. Aldrich then added that as Mr. Mayer was consenting, he didn't see that there should be any trouble in
2420 the matter or any controversy. Mr. Mayer said the Wrigley Company was fully consenting to the examination, subject ,of course, to all objections that had theretofore been made, and Mr. Aldrich agreed that Mr. Vin-

cent wanted the working sheets for examination at the Wrigley Company's offices the same as he was doing with the Wrigley Company's books.)

(2850) July 27, 1921. 10:00 A. M.

2422 (Mr. Aldrich filed a notice stating that counsel for the
2423- Larson Company would appear before the master on
2439 July 27, at 10:00 o'clock A. M., and move for an order upon the Wm. Wrigley Jr. Company to file an account showing the profits of Wm. Wrigley Jr. Company., Ltd. and Wm. Wrigley Jr. Company Proprietary, Limited accruing from the date of the organization of each of said companies to such date as each of said companies discontinued the use of the infringing dress on the Doublemint package; said account to be filed on or before December 20, 1921.

The said notice further stated that at the same time that the Larson Company would move the master for an order directing the Wm. Wrigley Jr. Company, defendant, to allow Touche, Niven & Company to examine the books of the Wm. Wrigley Jr. Company, Ltd. at Toronto, Canada, said examination to commence without delay and to continue until completed.

Mr. Aldrich then stated the motion substantially as set up in the notice, and further stated that his contention was that under the last decision of the court of Appeals the question was no longer debatable and that he was entitled to the order as asked for.

Mr. Mayer stated that Mr. Aldrich's motion would be resisted, that he disagreed with Mr. Aldrich's statement that the question had been settled by the last opinion of
(2851) the Court of Appeals, and that motions were premature until the master had first decided whether the foreign companies referred to were subject to the jurisdiction of the court, and second that if the master should conclude they were subject to the jurisdiction of the court, yet the master would have to determine on the evidence offered and to be offered as to whether there should be an accounting of the profits of the foreign corporations which were not parties to the litigation. Mr. Mayer then stated his understanding as to the state of the record and what the Circuit Court of Appeals had stated.

Mr. Aldrich then stated that he was not asking the cor-

porations not parties to the suit to account. That he was asking Wm. Wrigley Jr. Company, the defendant, in the suit, to account for their acts and doings. That he was maintaining that a transfer after the initiation of such a suit of all or a part of the property that Wm. Wrigley Jr. then owned, and the establishment of other corporations—for what purpose Mr. Aldrich did not know—did not relieve the Wm. Wrigley Jr. Company from the duty of accounting for the doings of those corporations organized in January, 1916.

Mr. Mayer stated that Mr. Aldrich had introduced evidence to show who the stockholders of the foreign companies were and the officers and what the charters of those companies were. That Mr. Aldrich's claim was that, pending the litigation begun by the Wrigley Company
(2852) against the Larson Company, that the Wrigley Company, in order to defeat the Larson Company and in anticipation that the Wrigley Company was going to lose its suit, had organized the foreign corporations.

Mr. Aldrich interrupted to say that he did not care what the Wrigley Company's purpose was in organizing the foreign corporations; that Mr. Aldrich's proposition was that after the Wrigley Company filed its bill against the Larson Company to enjoin the Larson Company from using its Wintermint label, it organized or caused to be organized the Canadian and the Australian companies, making the Wrigley Company, which is a party here, liable for whatever, if any, profits were made by those corporations, those foreign corporations, regardless of why they were organized.

Mr. Mayer then stated that he proposed to show by evidence what the actual purpose of the formation of the foreign companies were, and that they were not organized for an improper purpose, and further he proceeded to introduce evidence to show as a matter of fact that these foreign companies were independent companies and acted independently of the Wm. Wrigley Jr. Company.

Mr. Mayer stated at length his position on the question of these foreign corporations.

Mr. Aldrich stated his position, namely, that the alienation by the Wm. Wrigley Jr. Company of the Australian and Canadian business pendente lite to corporations of

the character shown by the facts in the record do not relieve the Wm. Wrigley Jr. Company from accounting for the acts of those companies in using the infringing
(2853) dress subsequent to the alienation.

2442 Mr. Aldrich stated that his conception was that it make no difference what the methods or purposes were in the organization of the foreign companies, that the Wm. Wrigley Jr. Company could not escape liability in that way.

2445 The master stated that as Mr. Lane was absent and unable to be present, he would not force the Wrigley Company into a hearing on a motion of that kind; that the questions raised were not mere matters of form, but were close questions in the master's mind; that he would fix the hearing of the motion as early in the fall as would meet the convenience of counsel.

After discussion counsel agreed that the matter could be set for September 23, 1921.

(2854) September 22, 1921. 11:00 A. M.

2454 (Mr. Aldrich brought on his motion for an order directing the Wm. Wrigley Jr. Company to account for the profits made by the Canadian and Australian companies from the sale of Doublemint gum in the infringing dress. The matter was argued that morning and in the afternoon of the same day.)

2455 September 23, 1921. 10:30 A. M.

(The master announced that he would not dispose of the motion until the Wrigley Company had a reasonable opportunity to put in its testimony on the question. The
2456 master at the same time stated that he intended to push the case to a speedy conclusion, if possible, and would go ahead with the main case regardless of the motion.)

2458 September 23, 1921. 4:30 P. M.

(2855) Mr. Aldrich filed a written motion in which he said
2458 that Marwick, Mitchell, Peat & Company, by their appointment by the Master, had become the court's accountants; that therefore it was proper and imperative that the Master instruct such accountants as to the law applicable to this accounting, and Mr. Aldrich on said

motion thereupon requested the Master to instruct those accountants as follows:

Advertising Account.

2459 The decree as entered prescribes the methods to be used in ascertaining the proper credit to be allowed the Wrigley Company for expenses in advertising the Doublemint gum in its infringing dress. It provides for the ascertaining of "the profits, if any, accruing to the said company from the sale of Doublemint as contradistinguished from the other brands of gum made by said company during the period, making proportionate deductions for overhead, advertising, or other proper expenses", etc.

This would require you to first determine what part of the so-called advertising account was properly an expense and what part, if any, was an investment properly chargeable to capital or good will account. The name "Doublemint" by this decree is not taken from the Wrigley Company, and if such advertising as this record discloses, in which the name "Wrigley's" is given the prominent place, and the names of the several brands a
2460 comparatively small and inconspicuous place, has a residual value which you can ascertain with reasonable accuracy, then you should ascertain such residual value and deduct this residual value from the total amount expended by the company for advertising during the accounting period. The balance remaining, *i. e.*, the total advertising expenditures less residual value should then be apportioned between Doublemint and other brands of gum on the basis of relative sales. That is to say, that the amount of advertising chargeable to Doublemint should be restricted to a percentage (equivalent to the ratio of Doublemint sales to the total sales) of the advertising expenditures remaining after deducting the residual value.

(2856) In this connection you may note that the total sales include some sales of merchandise, but as it appears from the record that the Doublemint gum was manufactured at the same cost, sold at the same price, subject to the same discounts, and upon the same terms as to payment and through the same jobbers or agents, and it also appears that the separation of the merchandise sales from

the gum sales would involve an examination of one and one-quarter million or more sales invoices, and an expense of from forty to sixty thousand dollars, and the Wrigley Company failed to make such separation, you are authorized to make the division of the total advertis-
2461 ing cost after deducting the residual value of the advertising by adopting the proportion of Doublemint sales to the total sales.

The decree cannot be rightly construed to mean that the total amount paid for advertising during the accounting period can be apportioned in the manner stated by Mr. Stanley which takes no account of the residual value of advertising or of the fact that the greater part of such advertising was of "Wrigley's" and not of brands, nor of the fact that the name "Doublemint" is retained by the Wrigley Company. The advertising account did not appear on the books of the Wrigley Company, as it is now stated by that company, and such statement wholly ignores the direction of the decree for "proportionate" deductions, which term refers back to the ratio of sales of Doublemint to all other sales of gum.

II.

Interest on Capital.

In this circuit the rule is established that in some cases interest on capital is an allowable item. In the present case, however, there is proof that the Wrigley Company had its investment in buildings, manufacturing plant and everything deemed by it necessary for the manufacture and sale of gum on a large scale, and no increase in its real estate or plant equipment was made necessary to enable it to take on and carry forward its manufacture of Doublemint gum.

2462 As it has been adjudged that the Wrigley Company was a willful and malicious infringer, and hence a trustee ex maleficio, no allowance should be made for interest on capital.

In view of the decision in Western Glass Co. vs. Schmertz, 226 Fed. 730, 738, however, you may include in your report a finding of the amount of interest on capital which would be allowable, computed on the following basis, *i. e.*, only interest on the increased capital made

necessary by taking on the manufacture and sale of Doublemint gum; then, too, you are to take into consideration the length of time for which such sum or sums were employed. The evidence in this case shows that the Wrigley Company makes, sells and receives returns upon its sales within a short time, perhaps within sixty, or certainly within ninety days. It is obvious that within a short time the difference between the cost price and the net sales price would create a fund which would carry on the Doublemint business without the use of any other capital than the profits from such infringing business. In this case, interest can only be allowed on the increased capital made necessary for this business, and for such time only as this increased capital was employed. After it had been recouped from profits, further interest on capital should not be allowed as a credit to the Wrigley Company.

(2857) Whether any interest on capital can be allowed a 2463 willful, fraudulent, malicious infringer, is reserved to the hearing.

III.

Income and Excess Profits Tax.

The credits claimed by the Wrigley Company under this item are not allowable, as upon payment by the Wrigley Company to the Larson Company the latter would be subject to the payment of such taxes of this nature as the amount paid made proper. To allow the credits claimed by the Wrigley Company in its account for these items, and then subject the Larson Company to another payment upon the receipt of the amount of the decree, would constitute double payment by the Larson Company. To avoid this situation, the law provides for a refund to the Wrigley Company in such a case.

The Wrigley Company by its account claims a loss to itself through its manufacture and sale of Doublemint gum during the period from July 28, 1914, to November 12, 1918. In the law of Federal taxation there can be no income and excess profits tax upon a losing business.

IV.

Salaries of Executive Officers of Wrigley Company.

The attacks upon the Larson Company by the Wrigley Company have been adjudicated to have been malicious,
2464 willful and fraudulent, and such as made the Wrigley Company in its infringement through the manufacture and sale of Doublemint in its infringing dress a trustee ex maleficio.

The salaries paid executive officers of the Wrigley Company during the period of infringement cannot therefore be allowed as items of credit to the Wrigley Company in this accounting. This direction will also apply to all sums paid attorneys of the Wrigley Company for services against the Larson Company.

V.

Purchase Price of Pulver Interest.

If you find any part of the purchase price paid Frank F. Pulver in the account of the Wrigley Company as a credit claimed by it in its accounting with the Larson Company, you will disallow all such items.

VI.

Depreciation on Buildings, Patents.

These items are not proper credits to the Wrigley Company, and you will not allow them in the statement of the account. Whatever might be the propriety of taking account of such items under some circumstances, they cannot be considered proper credits in behalf of a defendant adjudged a willful, fraudulent and malicious infringer which had purchased the buildings and patents
2465 in connection with its legitimate and non-infringing business.

VII.

a. The claim made by the Wrigley Company for in-
(2858) creased price of chicle used in the manufacture of
2465 Doublemint gum cannot be allowed as a credit to the

Wrigley Company. The cost stated by the Wrigley Company cannot be changed considering the acceptance entered of record herein by counsel for the Larson Company.

b. The Wrigley Company as an infringer cannot speculate upon price of materials entering into the manufacture of its infringing product.

In addition to the above matters, which are matters referred to in the account as filed and are deemed proper matters of consideration under the decree as drawn and entered, counsel for the L. P. Larson Jr. Company respectfully request the master to instruct his accountants to ascertain and state as a separate item the gross profits of the Wrigley Company growing out of the manufacture and sale of Doublemint gum in the infringing dress for the entire infringing period. By gross profits is meant the difference between cost of producing all the Doublemint gum sold in the infringing dress, and the amount which the Wrigley Company received therefor upon sale thereof.

2466 The purpose of this request is to enable us to ask the Court of Appeals to hold that the Larson Company is entitled to recover from the Wrigley Company such gross profits without any diminution whatever for advertising, overhead or other expenses because it is now adjudicated that the Wm. Wrigley Jr. Company was a malicious, willful and fraudulent trespasser upon the rights of the L. P. Larson Jr. Company.

We recognize that the master herein and the District Court will feel bound, in view of the recent decision of the United States Circuit Court of Appeals herein, to now follow the mandate of that court and the language of the decree as entered, but we shall contend at the proper time that the law as settled by the Supreme Court of the United States under the facts found, requires the recovery herein indicated and for that purpose we desire the record herein to show the gross profits as herein stated and that we made these requests at this time.

(2859) Tuesday, October 11, 1921. 10:30 A. M.

2467 (Counsel for the parties stipulated that during the course of the argument on September 22nd, and September 23, 1921, on the motion to direct the Wrigley Company to file an account of profits of the foreign corporations, the following occurred:

"The Master: Now, I don't think that so far the evidence shows that that division of the business and transferring of the Canadian part to the Canadian company and the Australian part to the Australian company was done for a sinister purpose.

"Mr. Aldrich: There is no evidence of that kind. It was done, and that is enough, and they can't send us to foreign countries to reach profits for which the liability of the Wrigley Company is fixed if it had kept this business. We say it still inheres in the Wrigley Company. We don't have to go to a foreign country to pursue that part of our remedy."

2468 Mr. Mayer made a motion that the master decide that he had not the power under the present order of reference to go into the question of the organization of the foreign companies, and their relations to the West Virginia Company. The motion was denied. Mr. Mayer then made a (2860) motion that the master hold that under the present condition of the record he did not have the power to take the evidence as to the organization of the foreign countries and their relations with the West Virginia company, until there is a further direction from the District Court. The motion was denied.

Mr. Mayer then stated that in view of the master's ruling, the Wm. Wrigley Company closed its case and rested so far as respects the questions of the foreign companies. The L. P. Larson Jr. Company did the same.

Mr. Mayer then proceeded to argue the question on the evidence.

Ruling of Master on Canadian and Australian accounting.

2469 Tuesday, October 11, 1921. 2:00 P. M.

2470 Monday, October 17, 1921. 10:30 A. M.

2:00 P. M.

(The argument on the Canadian and Australian matters was continued. The argument was concluded, and the master made the following ruling:

The Master: The Wrigley Company began this suit against the Larson Company; the Larson Company filed its answer and counterclaim to the bill of complaint asserting that the Larson Company had the exclusive right
2471 to sell gum in the dress-up or package involved in this case. The filing of this counterclaim amounted to notice to the Wrigley Company that a decree might be entered, as it afterwards was entered, sustaining the Larson Com-
(2861) pany's contention and awarding the profits made by the Wrigley Company on the sale of Doublemint gum in the infringing package.

When the counterclaim was filed the Wrigley Company was engaged in the manufacture and sale of Doublemint gum in the infringing package in the United States and through its branch establishments in Canada and Australia, and thereafter continued the infringing business in all of these countries until the end of the accounting period.

In January, 1916, the Wrigley Company caused a corporation to be organized in Canada and another corporation to be organized in Australia and turned over to the Canadian Company its property and business, including the infringing business, in Canada, and turned over in Australia its property and business, including the infringing business in Australia, and caused the Australia Company to turn over to the Wrigley Company all of its stock, common and preferred. This was not the purchase of a business and the sale of the stock of a corporation. It was a transaction by the Wrigley Company itself re-
2472 sulting in a division of its business among the three companies spoken of. It was not a barter and exchange. The Wrigley Company fixed the value that it placed on its business in Canada and Australia, and it fixed the value of the capital stock in both of these new corporations, it transacted the whole business, it was not a barter and

exchange at all, it was simply an adjustment by the Wrigley Company of its business in those two countries.

As I have already said the Wrigley Company was
(2862) carrying on the infringing business when the Canadian and Australian corporations were organized, and when all the testimony is considered together it is a fair conclusion that it continued to carry on that business throughout the accounting period. Does anybody doubt that the Wrigley Company shaped the policy of those two companies and carried on the business in those foreign countries substantially as it had been done before the corporation were organized? Does anybody doubt that the Wrigley Company could have prevented the foreign companies from continuing the infringing business if it had desired so to do? The Wrigley Company did not intend to dispose of its business in Canada, on the contrary it wanted to hold on to that business. There was a business reason for the organization of these companies and the Wrigley Company desired to change its form of
2473 organization to accommodate such business demands, but not to part with it.

It might be said that these foreign companies should have been made parties by supplemental proceedings. Whether under other circumstances that would have been advisable or proper I am not prepared to say. The evidence does not show when the Larson Company learned that the Canadian and Australian companies were organized and took over a portion of the infringing business. So far as the evidence shows the Larson Company may not have known of the organization of these corporations until after hearings began before the master. As I view it it would be inequitable and unfair to require the
(2863) Larson Company to go into foreign countries and relitigate the question involved in this case to procure profits to which it is entitled from the Wrigley Company.

I realize the force of the separate entity doctrine, but do not think it applies to a case of this kind. All of the stock except qualifying shares in the Australian Company is still held by the Wrigley Company, all of the stock of the Canadian Company was turned over to the Wrigley Company and the preferred stock still remains in the treasury of that company, the common stock was distributed pro rata to the stockholders of the Wrigley Company and some of those stockholders have parted with
2474 their stock, or a portion of it, so that there are some outside holders. This fact does not change the situation. If the Wrigley Company has paid profits to these outside stockholders that belong to the Larson Company, it may

have to pay those same profits again to the Larson Company.

I will sustain the motion of counsel for the Larson Company and direct the Wrigley Company to file an account of profits made by and through the Canadian company within thirty days and of the profits made by and through the Australian company within sixty days."

The Wrigley Company excepted to the ruling of the master.)

Wednesday, October 19, 1921.

2475 Ten-Thirty o'clock A. M.

(The matter of the motion made by counsel for L. P. Larson Jr. Company on September 23, 1921, appearing at pages 2458 et seq., that the Master instruct the accountant appointed by him as to certain matters of law, etc., came on to be heard.

Mr. Aldrich: At a prior session of this court I submitted in behalf of the counter claimant certain instructions which I asked you to give to the court's accountant with reference to the preparation of his report, and I desire first to ask an additional instruction. The court will, of course, understand that in asking these instructions which have been spread of record, which I desired they should be, we did not expect the court to adopt the identical language. We are submitting them, and asking that the substance as stated be given. I do not intend to argue them because your Honor is familiar with all matters of

2476 accountancy, and it does not seem to me to be necessary. Mr. Mayer made a remark or objection at the close of the other hearing, when they were presented, which I thought had force, and as you will see by the last of these instructions the reservation is intended to meet what he said at that time. They are all copied in, and I ask that the following be copied in:

"If you find from your examination made under the terms of the decree that profits were realized by the William Wrigley Jr. Company from its manufacture and sale of Doublemint gum in its infringing dress, the L. P. Larson Jr. Company will be entitled to recover interest on the amount of such profits at the rate of five per cent per annum from the date on which the William Wrigley Jr. Company ceased to use the infringing dress.

"In giving you these instructions on the several items of account it is intended only that the account should be stated on the basis named, but it is understood that the Master reserves to himself the right to change the same in any respect upon the final hearing if the evidence requires such change."

(Argument followed.)

The Master: Motion denied.)

(2865) (The master called attention to the bill of Marwick,
2477 Mitchell & Company for services rendered by Mr. Gledhill under the direction of Mr. Hall, as shown by their bill
2478 of February 24, 1920. It was concluded that the said firm should be requested to make an itemized statement showing the days upon which Gledhill rendered the services covered by the bill.)

(Wednesday, October 19, 1921. Herman S. Paine was called by Mr. Aldrich for further cross-examination on the overhead division of the Wm. Wrigley Jr. Company's filed account. After several questions had been put to the witness, it appeared that the information desired could be obtained by submitting to the witness, in writing, questions for him to look up on the books and records of the Wrigley Company and answer at a later session. By agreement of counsel his examination was striken physically from the record.)

(October 31, 1921, 11 o'clock A. M. Continued to November 1, 1921, 10:30 A. M.)

(November 1, 1921, 10:30 A. M. HERMAN S. PAINE recalled as a witness on behalf of the L. P. Larson Jr. Company, having been theretofore duly sworn, on direct examination by Mr. Aldrich, testified.) In computing the
2479 tax for each year, I only included what I paid without reference to when the tax accrued. The method was to simply pay the taxes as the bills were presented and allowed. What was charged in was the tax paid for the tax bills. I refer to the taxes on real estate and buildings. Now, with reference to the accrual, if we had charged into this original accounting the amount of taxes that had accrued instead of that which was actually paid, we would have had an additional charge of $2,900.50 to the account. As to the question whether in 1915 the L. P. Larson Jr. Company was charged with all the taxes accruing in 1914 instead of five-twelfths thereof, I will say we only charged
(2866) to taxes that which was actually paid and nothing that
2479 had accrued. The 1914 taxes, amounting to $13,165.91, which I paid were the taxes that accrued in 1914. As to the question whether I did not make an apportionment of those taxes of seven-twelfths and five-twelfths, I will say when we made this original accounting we had to make it
2480 in such a hurry that I just took five-twelfths and four days of the year 1914, and the accounts were not analyzed at that time at all, so I just took the portion of the year of each one of these expense accounts. I didn't go back of July 28th, therefore I can't tell now what payments were

made for taxes prior to July 28, 1914. I reported as payments made in 1914 $14.28.

(Mr. Aldrich stated that he didn't mean, by anything he had asked, to indicate that the account as filed by the
2481 Wrigley Company had any $14.28 item in it.)

My explanation of why I include in the overhead cost of $13,165.91 taxes accrued in 1914, is that it was shown on the books of the company charged to expense and I
2482 used it as shown by the books. As an accountant I would not say that only five-twelfths of that, or thereabouts, should be apportioned to the overhead embraced in the Wrigley account and filed. I say that because it is the commercial practice to charge the taxes as they come in every year and put them in their profit and loss account at the end of the year. It is not commercial practice to accrue taxes and set up the liability for them and then pay them in the next year.

With reference to the apportionment of the tax under the decree in this case, as I said a moment ago, I did not go back of July 28th and I therefore took five-twelfths of the overhead expense for the year 1914, therefor whatever taxes were in there were used in the account, what taxes were paid for that year. I would not say that any taxes that were paid in 1914 and which had accrued in 1913,
(2867) Doublemint was charged with five-twelfths of that.
2482 The only taxes that were paid in this period of the ac-
2483 counting were charged in the overhead, that is after July 28. I did not go back of that at all for this accounting. The same practice was pursued with reference to the taxes as to each account period, that is, the taxes actually paid were put in the accounting period in which they were paid.

With reference to the several payments made in the years 1914 to 1917 inclusive of $30,000 each year to Frank Pulver, I will say in the original accounting that I prepared it was not shown as a separate item for the reason that it was in expense, and since looking it up I find that the company charged it off to expense and I used it as charged as shown by the books, and it was included in
2484 the accounting under the expense item. The record shows that on December 18, 1914 $39,000 was charged to the Pulver account, the note being $30,000 and interest $9,000. I don't know the date of the notes that were paid during those several years. I didn't have occasion to look that up, therefore I cannot reply to that. I cannot answer that. Other payments made on account of the Pulver matter and the date when they were put into the expense account of the Wrigley Company are December 14, 1915, $37,200 total, being note for $30,000 and interest

2485 $7,200. December 18, 1916, total $35,400, note $30,000, interest $5,400. December 12, 1917, total $33,600, note $30,000, interest $3,600. All of these payments were included in the expense which is a subject item of the overhead. I believe I have included an item of $865.05 which was the balance of an account with William Scatchard. That was not in the original accounting. That was not in the original accounting as that item, that is found in the total of the expense account shown in the accounting, and looking it up I find that on March 19, 1915, (2868) or up to that time the account was considered good and 2485 at that time it was charged off as no good, it was charged into the expense and I used it. The record shows that this account accrued prior to July 28, 1914, but it was considered good up to March 19, 1915, they expected to get that account, collect it, and at that time they considered 2486 it no good and charged it off and therefore I used it as stated. On no other authority than my own I put into overhead the amount of the Brooklyn factory sales found in the several periods of the accounting. I used the classification shown by the books and it was charged into the expense and I used it. I am not prepared to give the several items of the different years. I have not got the figures nor the total for the several periods of the accounting. The Brooklyn items appear under the heading of expense, in the total of expense. As to whether these items of Brooklyn factory expense are items that enter into the manufacturing cost at the Brooklyn factory, I will say I used these as charged off by the company to expense and I used that classification. I didn't go into the matter 2487 of cost. All these items that I took were on the ledger under expense. I got it from the ledger at the time I made the original account.

The item of picnic gum is an item that's charged to expense and I used the classification shown by the books. I don't know what the details of that classification are. I have not the amount of those charges for the several accounting periods here. I can get them for counsel for the Larson Company, but I have not got them before me. 2488 I used my own judgment in including this item "picnic gum" during the years 1914 and 1914. It was charged in as one of the expense items and I used it as expense. It was not under the head "picnic gum". The item was charged to expense and the expense referred to picnic

gum, that is, I now find it that on looking it up. I didn't
(2869) know it before. The total of the expense of picnic
2488 gum appears on the expense account of the ledger. The words "picnic gum" do not appear in the ledger as the title of an account, but under the title "expense" are hundreds and thousands of items, and this item is in there in the expense and the expense I used as a total in the ac-
2489 counting. At the time I made the account, I didn't know what those items were. In preparing the original account, I didn't look up that item. In looking up answers to the questions put to my by counsel, I have found that item. In the original account I just took each year by itself and used it, the total of the expense. In my investigation preparatory to answering the questions put to me by Mr. Aldrich, I didn't ascertain whether or not these items for picnic gum included in my account were deducted from production to arrive at the cost of manufacture per box. I didn't get any information on that subject.

2490 At the time I made the original accounting I did not have information as to what the salary of James R. Offield per annum was, but since Mr. Aldrich has asked these questions, I now find that the books show that on August 1st, 1914, there was a charge of $2,500 and on November 1st, 1914, $2,500. In the original accounting this was all under the heading of expense.

As to whether there is included in the overhead for the period of 1914 a total sum of $5,000 on account of salary of James R. Offield, I will say I didn't go back of July 28th, so I don't know what charges were prior to that, but in the period in which I worked there were two items of $2,500 each, or a total of $5,000 in the last five months of 1914. I have not ascertained in connection with my answer to this question that his salary was $10,000 a year.

With respect to the charges covered by the item "Heat-
(2870) ing, shipping department", I am not prepared to an-
2490 swer that question in regard to the total of the amount
2491 so charged. I had no such item in the original accounting, but it is in the total expense. As to what total was covered by the item of "Heating, shipping department" would depend entirely upon circumstances surrounding the payments. It would require an examination of all the bills, and so forth, and I am having others in the office get out all those bills. At present I cannot give the
2492 information. I have the information with reference to

the item of depreciation of motor trucks, office furniture and fixtures for the year 1914, for the period of the accounting in 1914. The total amount charged into the 1914 overhead for that account doesn't show in the original account under that head, but it was charged in under the heading of expense. This amount is $6,982.20. That amount is depreciation on motor trucks and furniture and fixtures. I haven't said that this is the amount for the entire year of 1914, for the reason that I want to look
2493 up this other item we spoke about. There was included in expense in the accounting for the period after July 28,
2494 1914, and for the year 1914 an item of $11,986.81. It was not used in the original accounting under that heading, but the record shows that the company charged it off and I took it into the accounting as a proper charge against the profits, a proper charge in that period. On the records it appears under suspense or bad debts. I have not made any examination to ascertain what was embraced in the account so charged to suspense. I took the account as shown by the record and used it, it was charged off as a bad debt account and I used it in the accounting. By the term "record" I mean the ledger. Since I have received these questions and been invited to make an examination with reference thereto, I have ascertained
2495 that that item embraced advancements to chicle growers. (2871) As to whether they were all advancements made prior
2495 to July 28, 1914, I will say I didn't get that information as to that date. I have not got the information here as to whether the item to which my attention is now directed was made up of advancements to chicle growers from time to time, prior to the commencement of this accounting period.

I didn't show in the original accounting the item of $2,996.63 found in the account of 1914 and which Mr. Aldrich says he understands refers to salary and expenses
2496 at Brooklyn and Toronto for August, under that name. I now find it is in agency account, which is considered as expense account, and it was charged off and I used it as shown by the books. I found it under the heading "agency" on the Wrigley books at the time I included it in this general overhead account as an item. The agency expense item is shown on the record as agency expense, and the Wrigley Company have always considered it an expense of doing business and charged it off under the

2497 head of agency as an agency expense. Not every disbursement in accounting is an expense. You buy a table for ten dollars and you charge it to furniture and fixtures. That's not an expense, that's an asset. This amount was charged off. They never got anything for it in return that was tangible. I am not able to state that it didn't enter into manufacturing cost. I don't know anything about that. To learn what the facts were, I would have to look it up and investigate it further.

I found the item embraced in my overhead for the period of 1914 known as the "Percy Short case, $550.00"; also the Langley & Hansell claim for commission, $400.00, and also commissions for sales in 1914, $1,045.51, under heading "agency" on the original Wrigley books. Those matters bore the following dates: The Percy Short case,
2498 $550.00, September, 1914; Langley & Hansell, $400.00,
(2872) November, 1914, commissions on sales, $1,045.51,
2498 August, 1914. I don't know whether or not those were all expenses that had been incurred prior to July 28, 1914. As to the charge embraced in my overhead of $648.98, account of George F. Desbien, in the 1914 period, I found that under the heading "George F. Desbien" on the Wrigley books. The account in the journal was written off as no good. There was a personal account against Desbien, that is, charges to him, and in this period it was considered no good and it was charged off to expense. It was an account that was entered on the Wrigley books long before July 28, 1914, but it was not considered as being no good until this period and therefore charged off. It was considered good up until this time and then it was charged off as no good. When I have said with reference
2499 to this and several other accounts that somebody considered them bad at this period, I had reference to the mental operations of the company. I saw it on the company's book as charged off, as no good good, charged to expense account, and therefore I used it. I don't know who Mr. Desbien is and have no information on that subject. When I prepared the account for the master, I knew nothing with respect to this Desbien account. The facts which I am now giving Mr. Aldrich are facts that I have
2500 ascertained here within the last few days, in preparing to answer his questions. I didn't ascertain that Mr. Desbien was the far east representative of the Wrigley Company. I didn't get any information on that subject and I

didn't get any information as to whether or not any Doublemint gum had been shipped east at the time this account was written off.

In the original accounting, what was shown under Paris
2501 expense was charged off on the books as no good and I used it in the overhead. It was charged off during the period in which the accounting was made. I didn't say I
(2873) charged it off. I found it charged off on the Wrigley
2501 books. I never made any entries in the books. I simply took the books as I found them. The Paris advertising matter, having reference to $679.60 in the 26th question handed me, was written off and I took it in as shown by
2502 the books. By books I mean ledger. The bookkeeper that had charge of the books was James A. Gill. The entries had been made when I made up the overhead account. In my examination of questions 25 and 26, having reference to the Paris office and Paris advertising expenses, I did not get any information as to when the amounts embraced therein had been incurred.

The item of $259.38 for labor in transferring gum from old to new boxes did not show in the original account, but since that time I have looked it up and found it in the expense, and it was charged off on the books to expense
2503 and I took it in the accounting as charged off. It was charged off in 1916, but the date I don't know without looking it up. I don't think that a lot of matters were charged off at or about the time that I entered upon the preparation of this account. I could ascertain by looking it up. The item of $259.38, being for labor in transferring gum from old to new boxes, is in the total of the expense. As to whether this item is an item of manufacturing cost, the record shows it was charged to expense
2504 and I used it as such. I have gone over all these items and in my opinion every item that I have taken in expense properly belongs in expense. As to whether I took whatever was on the books as an expense and included it in this overhead without any reference to the question of whether or not it would be properly an item of overhead expense and deducted from manufacturing cost had I been making up the books originally, I would say that in most of the cases these items that I have put into the overhead expense are correctly placed there.

(2874) The item of $1,322.88, for legal fees in connection
2504 with the incorporation of the Canadian company and the

adjustment of the Canadian profits tax, is not an item found as such in the original accounting. It was an item of the expense account. It was under the expense account that I found this item. I don't know what portion of
2505 that was for the incorporation of the Canadian company and what portion for the adjustment of the Canadian profits tax. I included this item in overhead expense because it was shown by the books as charged to expense. As to whether or not I included everything in overhead expense that was shown by the books of the Wrigley Company without reference to my own judgment as an accountant whether it should be so included or not, I would say that I used my judgment, of course. As an accountant, I think that charges for incorporation of the Canadian Company and for the adjustment of the Canadian profits tax were properly overhead charges of the Wrigley Company.

2506 The alterations of the main office were not shown in the original accounting, but were in the total of the expense. It was paid in 1916, it was for cleaning, decorating, and so forth, and I considered it a proper account to charge into the expense. I found it on the Wrigley books as an expense and I also think it should be charged as an expense. I haven't the amount of that item. I don't know the exact date the alterations in the main office were made. It was charged in 1916. I could not tell without looking
2507 it up whether they were made sometime prior to that or not. As an accountant, I say that should be charged in 1916 and 1917, instead of being spread over the lease period, because it was not charged in 1917. It was all charged in 1916. That's what the record shows. I will answer why the cost of alterations should not be spread over the lease period instead of being put into one or the
2508 other of both of these years. The Wrigley Company (2875) rented the place. They did not buy anything repre-
2508 senting this amount. It was charged to them by the landlord for decorating and cleaning. The Wrigley Company did not acquire anything of tangible value. Therefore it was an expense and the amount is such that it is always the practice with amounts of that size to charge it right off and not spread it over the period of the lease.

The item of $778.43 for Paris offive fixtures written off
2509 in that year was included in the total of the expense, and the company charged it off as of no value and I took

it in the expense in the accounting. It was on the Wrigley books in the expense account. I understand the Paris office is yet in existence. I don't know positively. As to why I didn't write off the depreciation on this Paris fixtures account instead of writing the whole amount into overhead, I will say that was one of the items that I am not sure about, but it was on the books for an expense and I used it. I have not the amount that was written off for depreciation.

2511 (November 2, 1921, 10:30 o'clock A. M.)

Direct Examination of Herman S. Paine by Mr. Aldrich resumed.

(The witness testified). I was requested yesterday to look up as to whether the charge of $2,115.66 in 1914 was the cost of heating the shipping department for the entire year, or only for the five-twelfths of the years for which Doublemint might be charged. The clerks over there are now making up this statement. There are a whole lot of bills to get out and go through for all the facts. I can't
2512 give the information now, but the clerks are making that up and we should have it in a couple of days.

As to what is my information with respect to the item of depreciation of motor trucks and office furniture and
(2876) fixtures for the year 1914, I will say that yesterday I
2512 referred to two amounts, $6,982.20 and $59,031.15. I was mistaken. This $6,982.20 is included in the $59,041.15. That's the only amount that we should use. I mean that yesterday I was mistaken in my testimony in using $6,982.20. I used two amounts in the testimony yesterday and I am now going to speak with reference to the amount of $59,031.15. That figure refers to the depreciation on motor trucks, furniture and fixtures in that period, and from further investigation I find that seven-twelfths less
2513 four days of this should be credited back to the accounting originally filed. That means, when I say "credited back" that only five-twelfths of that amount, ignoring the four days, should be embraced in the Doublemint accounting. That was caused by the fact that the company sets up the depreciation for the whole years at the end of the year, and I took just the last part of that period and used that total. I didn't know of this until the further investigation.

The item of $11,986.81, being advancements to chicle growers, is involved in another statement that is being made up, and we ought to have that today. There is a lot of detail to go into and a lot of bills to get out, and other information, and that is now being made up at the office. It was not available when I came over.

I will explain, with reference to the two items to which my attention has been called and to which I referred in
2514 my testimony of yesterday as to questions Nos. 17 and 18 of the written questions that counsel for the Larson Company asked me to procure information concerning, the only amount that should be used is $59,031.15. That is shown in the original accounting filed under date of July 28, 1914, to December 31, 1914, under the heading "Expense". That is the only item that should be used and, as I stated a moment ago, that seven-twelfths of
(2877) this amount—this is the gross amount—that seven-
2514 twelfths of this amount should be credited back to this account. I didn't split it up. I was yesterday asked to procure information as to whether or not the items known as the Percy Short case, Langley & Hansell claim for com-
2515 mission and commissions on sales in July 1914 did not antedate July 28, 1914. That statement is being made up. There is a lot of detail to look up on that and we could not have it ready for this morning. It is now being prepared in the office.

With reference to the charge for the alterations of the main office, concerning which I was asked yesterday, I will say there was paid to J. L. Kesner February 14, 1916 $300.00, painting walls and ceiling. There were also two items, March 14, 1916, $750.00, and May 19, 1916, $1,-118.59. Those two items were for decorating, scraping the floors, changing electrical connections and other small items. Then there is an item, August 12, 1916, $302.25, painting and enamelling. The total is $2,470.84. This is
2516 in the total of the expense account. It was all paid in 1916. It is customary just as soon as anything of this kind is done to render the bills immediately, therefore I thought it was safe in assuming it was all done in 1916. Otherwise, the bills would have been rendered before the work was done, if any of it was done in 1917.

(Mr. Mayer then stated that items being investigated involved inconsequential amounts; that if Mr. Aldrich would present a memorandum showing what he claims

are the corrections that ought to be made, it ought to be
2518 a very simple matter to agree with him and save the time and expense of the hearing; that he didn't think there was any controversy that justified a protracted examination of the witness and the tremendous amount of
(2878) labor he has been putting upon the Wrigley Company
2518 and its counsel. Mr. Aldrich stated that he would probably spend no time upon the small items to which he had in his questions referred, but that he had a different object in view than merely correcting the account with respect to these items.)

2519 The item of $112,370.82 for expense of moving the Brooklyn factory, in the account for the years 1918, was in the total of expense. As stated before, I used the classification as shown upon the books at the time of the original accounting and charged this into the overhead. At the time of the original accounting, this amount was not suggested to me by any executive officer of the Wrigley Company. I took the expenses as shown by the general ledger. I didn't go to the other books at that time. I just used the general ledger. I used my own judgment in taking the items. I included the $112,370.82, for the
2520 expense of moving the Brooklyn factory, in the overhead account for the year 1918, because, as I said, it was the total of the expense and it was shown in the ledger. Without going back to see where all those items were, I took the total of the expense. I now find this item in there that I didn't know was there before. I took it because it appeared in the total of the general expense. I don't know by what authority it got in here. I had nothing to do with it. I am not posted as to the origin and history of that amount. I think Mr. J. C. Cox could tell you about that. I don't know that it was an item that arose from order of the Navy Department by which the Wrigley
2521 Company was required to move from the Bush Terminal Building in New York City. I have no information on that subject. I can't find anything in the books with respect to the subject matter referred to in question 40, viz: a claim filed against the Navy growing out of that order of removal. In question 40 I was asked: "It is not a fact
(2879) that a claim against the Navy Department for losses
2521 arising from the naval order resulting in the moving referred too has been filed?" Now, all I can say is that the books don't show there was any claim filed, that is, in

dollars and cents, or no other kind of record that I could
2522 find. The books don't show that any payment was made by the Government on account of this claim. As to whether that includes the time since the closing of the Doublemint account, I will say I only confined myself to the accounting period; after November 12, 1918. I did not look for this item after November 12, 1918, the close of the accounting period. I don't want to be understood as saying that if that item had been paid in full, the Doublemint accounting would get no benefit from it, because of my lack of knowledge on that point. I said that I did not look in the record after November 12, 1918 to answer this question. I looked in the period of the accounting to see if there was any payment made and I didn't find anything. As to whether it is possible for me to ascertain whether any claim has been filed against the United States growing out of that matter and what disposition has been made of it, I will say if it was in dollars and cents, it would be in the books and then I could find it, but if not in dollars and cents, it would have no reason for being in the books of account, in the Wrigley ledger. My recommendation then stands that Mr. J. C. Cox be questioned with reference to that matter.

2523 The item of $323.95, being a tax on essential oil, was made a charge in the overhead account as distinguished from the manufacturing account at my direction. It is in January 1, 1918 to August 24, 1918, the item is shown
2524 under the name "Taxes, essential oil, $323.95". That's in the original accounting filed. The original account as I filed it with the master shows $323.95 under the head
(2880) "Taxes, essential oil". The number of the exhibit in
2524 which that appears is Larson Exhibit 22-E. I derived that item from the general ledger. It was in the account "Taxes, essential oil." It was specifically on the book in that way. It was put there in the 1918 period. I have not got
2525 the date, but it is in the 1918 period that the entry was made. It was paid in 1918, cash paid. I have not the date when it was paid. It was paid during the accounting period. As to why it is not part of the cost of manufacture, I will say my information is it was not used in the factory cost and so I used it in the expense. I understand that it had not been worked up into gum during the accounting period. I have not the exact facts in the case, but from talk in the office, my information is that it was

no used in the factory cost and I used it here, in the expense, overhead. My information is that it had not been used in the manufacture of gum during the accounting period. As I say, in talking with different ones in the
2526 office I learned that. I have not seen the record of the cost, so I don't know. I took the accounts as shown by the ledger in the totals, and it would mean a further analysis of every account to find out whether supplies bought by the Wrigley Company that would enter into the manufacture of gum that had not been used in such manufacture during the accounting period is embraced in this accounting. As to whether it was sufficient for my purposes in making up this account that payments had been made on account of supplies, without reference to the question whether they had been used, whether such supplies had been used or not, all I can say is that I simply used the totals as shown in the ledger. I disclaim any responsibility for the ledger. I just took what I found there. In the period between October 5th and November 12th, 1918, we find the item of $3,420.77 representing
(2881) twelve-thirtieths of item $8,551.94 of New York sal-
2526 aries as an expense for November included under
2527 agency. That item gets into this accounting because the amount is in the total of the agency account on the general ledger from the period from October 5, 1918 to November 12, 1918. It was charged in the agency account and I used it as shown by the books in the accounting. The twelve-thirtieths represents twelve days in November. The accounting closed November 12th and I just used the first twelve days of November. As to what month this agency account, viz. $8,551.94, is expense for, I would have to get further information on that. That question was not asked in the written questions, so I didn't get it. I have made a note to get it. As to why this item is not an item of manufacturing cost, I will say I used this item just as shown by the books. Agency is
2528 always considered in the Wrigley Company's accounts as an expense of the business and I used it as such. It appeared under agency on the general ledger, as I stated before. Agency is one of the expense items, except instead of being the total expense, it is put under the head of agency. It is correct to say that on the general ledger there are two accounts that are properly expense accounts, one though is denominated agency account and the

other is denominated expense account, and numerous other accounts under different titles are considered expenses. I will explain that. The Wrigley Company opened on their general ledger numerous accounts which they wished to use to get special information, which accounts they used to show how much they paid out for those different things; they also opened in the ledger, in addition to those accounts, an account called expense. Any items that were not charged to these specific accounts were put in this expense account. As to how long they kept such an account in their general ledger, I will say I
(2882) have been auditing the books for probably fourteen
2529 years and over. Ever since I have been handling the accounts they have handled it the same way. That's true not only of the expense accounts, but the others. It is commercial practice that where they don't have any specific accounts, it is almost—it is not impossible, but it is not practical to have an account for every kind of a disbursement you make in books of account, but you have it for the main items. Then you make disbursements for something else that the headings of these different accounts will not control and you put it in expense miscellaneous. In every accounting statement an expense miscellaneous will be found. In my testimony of yesterday and so far today, except when I have designated otherwise, when I have referred to the expense account, I meant the account on the general ledger that was so denominated. (Mr. Aldrich stated that was what he understood.)

The item in the 1918 period under October 5 to November 12, of $1,613.18, being the proportion of the fee paid
2530 Messrs. Parkinson & Lane, attorneys in the Larson-Wrigley suit, is charged into the Doublemint accounting in the total of the expense. It was put into the account because I found it in the expense account. I didn't know at the time that there was anything paid to Parkinson & Lane at the time I made this accounting. As I say, I took the expense account and that didn't indicate it was Parkinson & Lane. It was always in the total in expense. It was in the general ledger without any description, simply the book and page. As to whether that item is a total amount or is just Larson's proportion of the amount paid Parkinson & Lane, I will say this amount paid is $1,613.18
2531 in the expense and I took total expense and put it in the accounting, and then of course we took the percentage of

the total for this year as the charge against the Doublemint accounting. The Parkinson & Lane payment, I now
(2883) find, is in the expense account. This payment was
2531 made between October 5 and November 12 in the last period of the accounting and so I used it as shown. The figure $1,613.18 that has been named to me did not represent what I regarded as the proportionate amount that the Larson Company should contribute. The item is the total amount and I only used the percentage of this amount as the Doublemint sales bore to all sales; that was all that was used. I can't tell now whether the total
2532 amount paid Parinson & Lane was the figure that has been named. I have not got the original accounting from October 5 to November 12 before me. If I had that here, I could tell. That item was in the total of the expense. The item in the period from October 5 to November 12, 1918, purporting to be for proportion of rent of shipping department for October and November, charged to overhead, does not represent an actual expenditure by the Wrigley Company. As to why it is included in the expense in overhead, I will say this was a journal entry made in this period debiting expense and crediting real estate income. I included it in the overhead because it was in the expense. I now find that a proportionate
2533 amount will have to be credited back in a supplemental statement. As to why I say a proportionate amount and as to why it should not all be credited back, I will say the same amount that was charged into the original accounting will be credited back so that will eliminate it. That means the total of $1,378.43 will be taken out of this account. I have an explanation to make. This will make it clear: Whatever amount in the original accounting that applied to this $1,378.43 will be credited back. The whole amount of $1,378.43 charged on the account filed with the master was charged to Doublemint as a portion of the rent for shipping department. I don't know how many dollars was charged to the Doublemint account in the account filed with the master.

(2884) As to by whose authority and how the item of $2,-
2534 008.12 was charged in overhead as the proportion of cost of plans for a new building, I will say that's in the total of the expense. I charged it simply because it appeared on the expense account as some money that had been paid out. I don't know what building is referred to in such

charge. I am informed that it was a building that had not been built at the time of the close of the Doublemint accounting, November 12, 1918. It is not an improper charge in this account, because there was $2,008.13 that was paid out by the Wrigley Company in this period that required no asset. As they got nothing from it, they had
2535 to charge it to the profits of the business and I think it is a proper charge. It was an expense of the business. In my judgment as an accountant, in this accounting between the Larson Company and the Wrigley Company, amounts that had been paid to architects for plans for a new building not yet erected are proper items of expense in this accounting. I say that in this instance because I am informed that the building project was abandoned. There was no asset acquired. That amount had to be charged against the profits of the whole business then. I considered it proper proportion against the Doublemint
2536 accounting. Mr. Cox gave me a statement of the amount of $18,564.90 that was to be included in this accounting of July 28, 1914 to December 31, 1914, to be included in overhead under the heading of "depreciation of buildings". Mr. Cox gave me this statement when we were making up these figures, making up the accounting for the period July 28, to December 31, 1914. That item appeared on the books of the Wrigley Company prior to the time Mr. Cox handed me this statement. It was in real estate income, but as I only handled the overhead—there were others that handled different items in this accounting, and Mr. Cox's duty was to take care of the depreciation items. As to how this account appears in this present accounting
(2885) in the overhead account, I will say depreciation was
2536 was not charged to the factory. Depreciation was deducted from invested capital and included in the overhead. That was the only way it was reasoned out and Mr. Cox prepared this statement, gave it to me and I put it in here as part of the overhead. That item appeared
2537 in the real estate income, and in the accounting the real estate income was set aside as far as overhead was concerned, and then it was taken up by some one else in the company who figured out the amount to put in here as overhead. In keeping the books of the Wrigley Company, depreciation of buildings was not handled as an item of cost or manufacturing cost in any way. Never in the history of the Wrigley Company was it so handled. As to

why it was taken from the real estate account or real estate income account and put in overhead, as I have just stated, that depreciation was not charged to the factory. They charged the factory rent and depreciation on the buildings was charged to the real estate income account and credited to reserve for depreciation. I have heard of a practice on the part of the Wrigley Company of charging a certain amount of rent into the account showing the cost of their manufactured product, but I have not got the data.

2538 This item of $18,564.90 would not amount to a duplication of charge, because the depreciation in this accounting was deducted from the invested capital and taken in
2539 the overhead. There have been no duplications, as I understand it. This depreciation was charged on the Chicago buildings, meaning thereby, the factory buildings. As to whether I am able to state positively that there was any item of this character on the books prior to
2540 the time I was preparing this account, I will say that in the period of July 28, 1914 to December 31, 1914 there was shown on the general ledger an item of $44,555.84 which was five per cent depreciation on buildings charged
(2886) into income real estate and credited to reserve for de-
2540 preciation. In the statement given to me by Mr. Cox, the total of that used in this overhead is $18,564.90, the item you refer to. That's five-twelfths of the larger sum. As to why that was not properly a part of the manufacturing cost, I will say, as I stated, that my information is that rent was charged to the factory and this depreciation that
2541 I now speak of in the preparation of this account was deducted from invested capital, therefore deducted from that and put in the account filed July 28, 1914 to December 31, 1914, which to me is proper. My information is that the fire loss at Belize, Honduras, referred to in the account, occurred August 17, 1918. I understand pork was destroyed there at that time. As to what connection that has with the Doublemint-Wintermint accounting, I will say I find upon examination of the items in the adjustment statement, page 35, item 34, of $1,700.30, it is too large by $135.15 due to an oversight in not deducting $135.15 which is included in the $5,313.83 proportion of the fire loss. Now, we will have to make a credit back for this $135.15, net credit of $135.15, to the Doublemint accounting. I understand the pork was stored at Belize

2542 because it was used for food for the chicle gatherers. It was in the warehouse. I don't know whether any chicle was gathered after the date of this fire. I don't know whether that would enter into the Doublemint accounting. I could ascertain it from some one else. I think Mr. Wood of the Wrigley Company could give that information.

(Mr. Mayer suggests that Mr. Cox can give the information.)

As to what benefit Doublemint derived from this loss, I will say the pork was sent there to feed the gatherers that gathered the chicle that was to make the gum. I don't know when it was sent. As to whether it is not a fact that a portion of this loss is included in a separate (2887) item $1,700.30, during the period from January 1 to 2543 August 31, 1918, I will say I have just answered that, that there was $135.15 that the Doublemint accounting will have 2544 to be credited with net to correct that. The whole $1,700.30 is not a duplication, and this item of $5,313.83 should not go out of the overhead entirely, for the reason that the pork was bought for the good of the whole business, for the gathering of the chicle to make all gum. As to whether or not in item 34, "Loss by fire at Belize, August 17, 1918, $11,202.57 x 15.1778%", I have computed a percentage on the loss, I will say that in making up the amount to credit back to Doublemint accounting, which figures $135.15, I have not all the figures here that make up that item, but that is the amount that we want to credit it as it was charged in by an oversight. As to why this item of $5,313.83 should be included in overhead and also the item of $1,700.30 in item 34 of my supplemental account, I will say the item of $5,313.83 was the proportion of the fire loss, and I think I will have to repeat just 2545 what I referred to there, that upon examination of the item on the adjustment statement, page 35, item 34, that the $1,700.30 is too large by $135.15 and due to an oversight in not deducting $135.15, which was included in the $5,300. Now, I hold that the only amount to be credited back is $135.15. As to why it does not amount to a duplication if we find the $5,300 item in the overhead and find the Doublemint proportion in item 34, I will say we have only taken in this item 34 15.778% of $11,202.57. As shown by item 34, $11,202.57 is the total loss. I have not the memorandum here as to how this item of $5,313.83 was

arrived at. I would have to get further information on
2546 that. As to why a part of this loss should be charged to the Doublemint account, I have said on that, that this pork was sent there to feed the gatherers that gathered the chicle that made the gum, and this was an entire loss of
(2888) the Wrigley Company and therefore it is properly
2546 chargeable against the whole profits of the business and therefore, as it was purchased for the purpose to make all gums, Doublemint should stand its proportion of that loss. It was a loss during the infringing period and I think should stand in that period. There was no recoupment of any portion of this loss through insurance, that I know of.

The amount of salary paid Wm. Wrigley Jr. from July
2547 28, to December 31, 1914 was $31,250. For the year 1915, $75,000; 1916, $75,000; 1917, $75,000; January 1, 1918 to August 24, 1918, $43,750; August 25, 1918 to October 4, 1918, $12,500; October 5, 1918 to November 12, 1918, $6,250; making a total for the entire accounting period of $318,750. I have no information as to whether at some period of this accounting there was an extra salary of three months given to the executive officers. I would have to make further investigation to find that out. From
2548 July 28 to December 31, 1914 the salaries paid the executive officers of the Wm. Wrigley Jr. Company were: J. H. Patrick, $10,416.65; E. W. Eckerly, $5,000; J. A. Gill, $2,083.30; J. H. Stanley, $1,249.98. For the year 1915: J. H. Patrick, $10,416.65; E. W. Eckerly, $12,000.00; J. A. Gill, $5,000.00; W. H. Stanley, $5,000.00. For the year 1916: E. W. Eckerly, $15,250.00; J. A. Gill, $6,100.00;
2549 W. H. Stanley, $7,116.66; George J. Neuman, $3,965.00. For the year 1917: E. W. Eckerly, $17,600.00; J. A. Gill, $7,040.00; W. H. Stanley, $9,600.00; George J. Neuman, $4,576.00. January 1, 1918 to August 24, 1918: E. W. Eckerly, $11,666.70; J. A. Gill, $5,250.00; W. H. Stanley, $7,000.00; George J. Neuman, $2,916.70. August 25, 1918 to October 4, 1918: E. W. Eckerly, $3,333.32; J. A. Gill $1,500.00; W. H. Stanley, $2,000.00; George J. Neuman, $833.32. October 5, 1918 to November 12, 1918: E. W. Eckerly, $1,666.66; J. A. Gill, $750.00; W. H. Stanley,
(2889) $1,000.00; George J. Neuman, $416.66. Mr. Neuman
2549 was an assistant secretary. Those payments were actual
2550 cash payments made during that time. As to whether J. C. Cox or A. G. Cox were in receipt of salary from the

Wrigley Company during the accounting period or any part thereof, I will say I know that J. C. Cox received salary, but I have not the information with reference to A. G. Cox. I am not able to say he did not receive any salary during this time. I don't know the amounts that were paid J. C. Cox during the accounting period. He was an executive officer, but my information is that his salary was charged to the factory and went into the factory accounts.

2551 (November 2, 1921, 2 o'clock P. M.)

The salaries which were mentioned before adjournment were included in the overhead during the accounting period. I have not yet ascertained what Cox's salary is.

The item of $4,402.51 under the heading of "Salesmen's premiums" in the account for 1915 was taken from the account shown in the accounting of January 1, 1915 to
2552 December 31, 1915, under the name "Salesmen's merchandise" and is so shown in the general ledger; the total of salesmen's merchandise. I did that on my own authority. I did that of my own free will. On the general ledger it appeared under the title "Salesmen's merchandise". That was another account. I don't think that this item is also included under the heading of U. P. S. coupons redeemed. I had nothing to do with the U. P. S. coupons, the accounting the U. P. S. coupons, so I cannot say. I don't think it is, because I believe this accounting is correct. That's the reason. As to what branch of the Wrigley business this item was connected with, I will say I understand that salesmen received merchandise as a commission for selling goods, and this item is charged
(2890) into the salesmen's merchandise account as an expense
2552 item because they received nothing for the merchandise, actual cash, or that I know of. I don't know if all goods given for premiums were treated in the same way I say
2553 this was treated, but I know this was treated that way. All I know is just with reference to this item.

The $1,500 paid Albert H. Smith in March, 1917 is found under expense in my overhead account. I don't know under whose direction this payment was made. I looked it up, and upon examination of the check and the
2554 entry in the check register, I found no reference to James R. Offield. The check was made payable to Albert H.

Smith. It is a voucher check and on the inside it is marked as a charge to expense. The books don't show it was under the direction of James R. Offield, they don't show any more than what I say, that the check was made payable to Albert H. Smith. It was a folded check, what we call a voucher check. The inside shows what account
2555 this should be charged to and shows expense. I don't
2556 know who Mr. Smith is. I don't know who of our people would know.

(Mr. Eckerly suggests to Mr. Aldrich that Mr. Cox would know.)

The Wrigley Company kept a ledger which is the final resting place of all the figures to show the assets and liabilities and the profit and loss accounts. In my reference during my testimony yesterday and today, where I have spoken of the general ledger, I meant the one I have just described. I accepted and included in my account as overhead items, items which I found on the general ledger which were charged to expense. I said in the course of my testimony that the fact that I did find items in the expense account of the general ledger was considered by
2557 me adequate authority to embrace the items in the account. I didn't go beyond the fact that the items were
(2891) found in the expense account. It would not be right to
2557 say that I was responsible for the entires to be found under expense account in the general ledger. I can probably make clear by an explanation my connection with the general ledger. In an audit I checked all the postings from the books of original entry that go into the general ledger, and in the general ledger are all the assets and liabilities and the profit and loss accounts. When I check those post-
2558 ings from the books of original entry—they may be posted together or may be single items taken from the books of original entry. I see that they are posted into the account as shown by the book of original entry. I don't go back of that original entry in the journal or the check register, so I know nothing about the authority for making that entry in the book of original entry. I see that it is put into the general ledger in the account that is called for in the book of original entry. That's been my duty since about January 1, 1911. I do other things besides that. It is a mistake to understand my prior testimony as meaning that it was my duty to correct any postings on the general ledger which in my opinion have been

put into the wrong account. There is a misunderstanding about that in this way, that in the book of original entry it states to charge expense, and by looking in the general ledger to where that must be posted, it is posted into
2559 postage, and I don't find it in expense. I put it in the report that I find such errors and then the bookkeeper makes the correcting entry, bu I don't question, don't go back of the entry in the book of original entry unless on the face of it it shows something to me that seems entirely erroneous and then, of course, I question it. The expense account in the general ledger with reference to items concerning which I have been examined, and the profit and loss account, are one and the same thing. The profit and loss account takes in all expense accounts and all items
(2892) that are considered losses, they are charged off at the
2559. end of the fiscal period. This account is also credited with the net sales or any other income considered such. The balance on the profit and loss account would be the
2560 net profit or loss for the period. There is only one account called profit and loss and that is the summary of the profits and losses for the year. The expense account that you just spoke of is an account, as I have testified this morning, into which is placed all items that could not be posted to any other expense account in the same ledger. It is almost impossible, it would be impractical for a commercial house to have an account for everything they bought, one for pencils, one for ink, one for pens, so they put it under expense miscellaneous, but when they have something like agencies where they want to collect all agency expense, they write at the head of the page "Agency" and put in that account what is considered agency expense. In circular department, salaries are put in the salaries for the circular department. Now, that's all expense, but they are separated this way so they can see what each one of these accounts means and how much they total, but all those accounts at the end of the year go into profit and loss because it has got to go against the income
2561 which is credited to profit and loss at the end of the year, and then the balance is the net profit or loss. When I was examined heretofore, I had the working papers showing how the several items, different things, entering into the overhead account had been arrived at. Those papers are in the record before the master at pages 574 to 579, both inclusive, statements of general expense, marked Larson

Exhibits 22-A to 22-F inclusive, and were introduced during the taking of the testimony of the witness Stanley.

Cross Examination by Mr. Mayer.

I have had twenty-five years' experience as an auditor. That's my profession. I am not a regular employe of the
(2893) Wm. Wrigley Jr. Company. I am called in from
2561 month to month to do certain auditing of their books.
2562 That's been my relationship to that company since about fourteen years ago. I am familiar with the method in which their books are kept. I put in the system. I introduced the system approximately fifteen or sixteen years ago. That system has been followed since. It was part of the system that I installed to keep on the general ledger accounts under various headings that I regarded appropriate items which would ultimately be regarded as an expense of the business. There are various titles of accounts in the general ledger, such as advertising, ex-
2563 pense, salesmen's merchandise, Advertising expense consists of separate items. There are other titles, salesmen's merchandise, postage, exchange, in-freight, out-freight, agency, administration. Administration is separate from agency. There are auditing department salaries, insurances, taxes, bad debts, documentary revenue stamps, office stationery. Accounts under names of the type I have just given have been kept in the general ledger of the Wrigley Company and its predecessors since I installed the system. The book now handed me is the general ledger which Wm. Wrigley Jr. Company used dur-
2564 ing the year 1914. That book was kept by the Wm. Wrigley Jr. Company during that entire year in the due course of its business. I had something to do with the handling of that particular book during the year 1914. It was customary for me to come in once a month to make an audit, sometimes it might go over two months before I went in, but back at this time I went in every month regularly and made a monthly audit, and counted the cash and reconciled the bank account. In the system which I installed for the Wrigley Company, I directed an account to be opened on the general ledger under the title
2565 "Expense". In the book I have here, that account appears on page 52. At the top of the page it written "Expense 1914". For the period 1914 that account

(2894) covers about two pages in the book. In that book, on
2565 each page, under the word "Expense 1914" appears "Date", "Folio", "Debits", "Date", "Folio", "Credits", "Dr. or Cr.", "Balance". In other words, there are eight separate headings underneath the name of the account. That is true of the whole ledger except the private journal beginning on page 289 and extending to the end of the book, which is page 300. There are 300 numbered pages and about 3 unnumbered pages following page 300.

The following includes everything there is pertaining to the first item shown under the 1914 expense account
2566 which is on page 52 of the ledger. Under the column headed "date" appears "1/29" which stands for January 29, 1914; under the column "folio" appears "C 540" which means page 540 of the check register; in other words, the item is transferred from that page to the general ledger; under the column headed "debits" are the figures "694.99" which means $694.99. The expense account shown on the general ledger and to which I have referred contains nothing to indicate the nature of the items. Nothing appears there excepting dates and amounts and the pages from which the items were transferred to the expense account. When I made up the account which was filed before Master Morrison, I referred to that identical expense account to which I have just been calling attention. In making up the account which was filed before the master, I assumed that the figures
2567 appearing under the expense account represented actual expenses of the Wrigley business. The first item which I have described is an item of $694.99 charged to expense and transferred to the expense account from the check register at page 540. The check register is a record of all checks issued and also therein is recorded the deposits made in the bank and the deposit columns show the date of the deposit, the columns pertaining to the
(2895) issue of checks show the date and the month and the
2567 year, to whom the check has been paid, and then distributing columns to the right and in one of these columns is placed the amount. These distributing columns are headed for convenience with the different titles in this book—I mean in the general ledger—so that instead
2568 of posting every item in the check register, if it an expense item, it will be put in the column "Expense", and

this first item here of $694.99 is all the items in the check register that were considered as expense miscellaneous and only the total of that column was posted to save all the work of posting all the items that will go into that column, just posted the total. In other words $694.99, the first item under the expense account in the general ledger that I have before me, might mean that one check for that amount was drawn or that it is the aggregate of, say thirty checks. This ledger that I have produced here shows the various items of expense that have been brought over from the other books and which was made out in accordance with the system designed by me a good many years ago. The entries and transfers into the expense account that I have before me in the general ledger were made, speaking generally along the lines that I suggested. From time to time it was a part of my duty, as an auditor, to go through the account on
2569 the general ledger called expense account for the purpose of finding out whether the entries appearing thereunder were properly transferred from the journal or check register or other book from which the entries in the general ledger were transferred, so that from time to time I had occasion to know whether, speaking generally, the items transferred to expense account were in fact items properly put under the expense account in the general ledger. During the entire period for which I audited these accounts, I treated the entries on the general ledger under expense account as having been properly placed there. I never had any occasion at any time
(2896) while I was auditing the books of the Wrigley Com-
2569 pany to believe that the account headed expense in the general ledger contained items that were not in fact properly chargeable to expense account. That is true during the entire period I was auditing these books and
2570 covers the time not only during the accounting period, but also the time before July, 1914. The same system was pursued by the Wm. Wrigley Jr. Company during all of the years since I introduced the system. There has been no change in their method of keeping books.

Postage is a simple account appearing in this 1914 ledger that was placed there at my suggestion and stands for items that should go into an expense account on the final analysis. On page 35 of this same general ledger appears an item "Postage 1914". The following is

2571 everything that appears under that postage account pertaining to the first entry shown therein. Under the column headed "Date" is "1/31" which means January 31, 1914. Under column headed "Folio" appears "C 543" which means the item is posted from page 543 of the check register; and under the column "Debits" appears "3,444.45" means mean that $3,444.45 was charged to the postage account on the date stated. As a matter of fact, nothing appears under the account called postage to which I am now referring excepting dates, the folio from which the items were transferred and amounts. From time to time in the course of my auditing of these books, I also check off the items under the postage account and compare them with the places from which the entries were made. Now, if we would take each one of these various head notes to which I have referred, "Administration" and so forth, we would find a similar state of
2572 facts, that is, all that would be found there would be the names of the accounts, dates, the reference to the books and pages from which the items are transferred, together
(2897) with the amounts. It was my habit during the time
2572 that I have been auditing these books to check off all of those accounts on the general ledger and see whether they were correct, as compared with the books from which the entries were transferred. I find during the entire course of my auditing that those accounts in the general ledger were properly kept and they were all kept in accordance with the system I had introduced. I had to do with the preparation of that part of the account filed before Master Morrison known as "overhead". In
2573 making up the overhead account as filed before the master, I was using the different accounts taken from the general ledger with which I had the familiarity that I have already described and which I knew to be correct. I knew, from time to time during the entire number of years that I was doing this auditing, that those accounts to which I referred in making up the overhead account were correctly kept, and were kept in the due course of its business, and were kept in accordance with good accountancy; that the Wrigley Company relied upon their correctness in the conduct of their own business and in the determination for their own use of what their profits were. When I prepared the overhead items in the account filed before the master, I had no reason to suspect

2574 or believe that the items in the general ledger to which I went and which I used were not entirely correct. Speaking generally with respect to the items as to which Mr. Aldrich has interrogated me today and yesterday, taking by way of illustration question No. 7, which has to do with regard to the $865.05 item pertaining to William Scatchard, no item appeared, either under that name or under that particular figure, on the general ledger accounts which I used in preparing the overhead for the master's account. As to when I had occasion to learn that there was such a specific item involved in the overhead accounting that I prepared for Master Morrison,
(2898) it was in the last few days. A week or ten days ago,
2574 when there was handed to me a list of seventy typewritten questions, I was informed that the list of questions had been prepared by Mr. Aldrich and submitted to
2575 me so that I could investigate and prepare myself to answer them. I understood that that was the same list of questions which Mr. Aldrich referred to about ten days or two weeks ago when I was on the stand, and when he said he would submit a list of written questions.

The charge of $648.98 pertaining to George F. Desbien, referred to in Mr. Aldrich's written question 24, was an item on the general ledger to which I referred when preparing the account filed before the master. That particular account was on the ledger under the name George F. Desbien. The date was 1914. I haven't got the day and month, but it was in the period.

Referring to Mr. Aldrich's question 35 which has to do
2575 with an account of $678.42 for Paris office fixtures purchased in that year, I didn't have an account before me under that name or for that amount specifically when I prepared the account filed with the master. That was an item included under some other heading such as expense account on the general ledger. That is true, speaking generally, of most of the other specific items that the seventy questions refer to. Speaking generally, they didn't appear under the names or amounts indicated in the questions under the general ledger accounts to which I refer. The general ledgers of 1915, 1916, 1917 and 1918
2576 were ledgers kept exactly the same way as the one covering the year 1914. In my checking off from time to time, I covered those ledgers also. During the whole accounting period, from time to time, frequently monthly, I

would check these inanimate accounts on the general ledger with the sources from which the transfers were
(2899) made and found them to be, in due course, properly
2577 made and in accordance with the system that I installed, and which was relied on by the Wrigley Company as correct. When I prepared the overhead items that went into the report filed before the master, I had nothing in mind other than the preparing and filing of an accurate statement of the overhead. It was my purpose to pre-
2578 pare the overhead item with absolutely accuracy. It seems to me it would take several years, if instead of making up the overhead by referring to the figures on the general ledger, I had gone back to all the items which were ultimately posted into those accounts in the general ledger for the purpose of independently then determining whether the items are properly chargeable to overhead. I don't recall how much time I personally spent in gathering the information that went into the item of overhead in the account filed before Master Morrison. My recollection being refreshed by the date upon which the master ordered the filing of the Wrigley accounts and the dates upon which those accounts were filed, I would say that I personally devoted about two months in the preparation of this overhead account. That was
2579 practically all I was doing all that time. I was working some nights. It never occurred to me at any time while I was preparing the account of overhead for the master that I should use any other basis than the dates of payment. It never occurred to me at any time while I was preparing the account of overhead for the master that it should be prepared on a basis of accrual instead of payment. The first time that any such thought was brought to my mind was when Mr. Aldrich asked me either yesterday or the day before as to whether those items were used on an accrual basis or not. By payment basis I mean that I used the items as they appeared on the books between the first and late dates of accounting. The items so appearing during that period were supposed to represent payments made during that period.
(2900) If an accounting before the master were made on an
2580 accrual basis, it would be necessary to examine the records to find out the objects for which the payments were made and when the liabilities for which the payments were made accrued. That would be a great deal of work

for the reason you would have not only to go back to the book of original entry from which the postings are made to the general ledger, but to all the bills and vouchers of every nature from which the entry was made in the journal or cash book in order to ascertain whether such an amount belonged to a prior period on an accrual basis or belonged to the period in which it was entered. If I used the accrual time as a basis for accounting instead of the dates of payment, I would have to examine the books and records of the Wrigley Company after November 12, 1918, with a view of finding what payments were made
2581 after the accounting period for liabilities incurred during the accounting period. I have testified, in ascertaining overhead I went to the general ledger account headed "Taxes" and ascertained what amounts appeared there to have been paid during or within the accounting period. I used that amount so ascertained as a basis for the preparation of my overhead account. From the amount so ascertained I took a certain proportion, as indicated on the report filed with the master, to determine how much of the taxes was chargeable to the Doublemint account. The first item which I in fact took in my method of computing the taxes was $14.28 for the period from
2582 July 28 to December 31, 1914. That was the amount, and the only amount, which appeared on the books to have been paid during those dates on account of taxes during the period July 28, 1914 to December 31, 1914. The total tax paid during the account period was $50,746.80, that is, speaking of taxes on real estate and buildings. Those figures refer to no payments other than taxes on real estate and buildings. I have had occasion
(2901) since Mr. Aldrich submitted these seventy questions
2582 to figure the amount of taxes that actually accrued during the accounting period. The amount was $53,647.75. Accordingly, if it developed that the account filed before the master should have been made on an accrual basis instead of the basis of payments actually made within
2583 the accounting period, I would have deducted more from the Doublemint account than I actually did. The gross amount would be $2,900.95. By using the method that I did pursue and by not using the accrual basis, Larson got a benefit. The customary way of keeping books and records of commercial concerns is on an actual payment basis rather than an accrual basis, unless there are some

extraordinary items. The books and records of the Wm. Wrigley Jr. Company were sept according to proper accountancy methods. According to the record, Wrigley Company made no payments to Pulver in the year 1918. I have nothing here from which I can tell whether a payment was made to Pulver in 1918. In the account filed with the master I did not include anything on account of
2584 any amounts paid Pulver in 1918. I did not include anything in the overhead account filed with the master on account of $100,000 paid to Pulver in 1913. I was informed that such an amount was paid to Pulver in 1913. As to how much of the item $1,374.83, involved in written question No. 49 by Mr. Aldrich, should be charged against Doublemint profits, that's a question I have got to look up. I have a memorandum. By nothing I said did I intend to testify that Doublemint was charged, in the accounts filed before the master, with the sum of $1,378.43.

2585 Referring to Mr. Aldrich's written questions No. 59 to 62, which refer to $5,313.83, the item connected with the fire loss at Belize, I can't say how much was actually charged to Doublemint in the account filed with the master on account of that item. I have a memorandum to
(2902) look that up.

2585 *Redirect Examination by Mr. Aldrich.*

2586 As to whether all the items embraced in the overhead account from July 28, 1914 to December 31, 1914 will appear on the ledger of 1914 that I have in the courtroom, I will say some of the items are under the heading "Expense" and some are special accounts headed in accordance with the title shown here, for instance postage, there is a postage account. Every item will appear there, but it may not be just the distinct amount shown in the account statement from July 28, 1914 to December 31, 1914 —Larson Exhibit 22. For example, we have taken a proportion of the depreciation of buildings and used
2587 $18,564.90, but if you turn to the ledger, you won't find just that item of $18,564.90, but in the ledger you will find everything I have got here in this account. Everything that is in the account as stated for the period named is on the ledger, and that is true of every accounting period in the account as stated.

2588-2594 (November 16, 1921, 2 o'clock P. M. A discussion took place, at the conclusion of which the master enlarged the time for filing the account of the Canadian Company thirty days from November 16, 1921.)

2595 (HERMAN S. PAINE resumed the stand for further redirect examination by Mr. Aldrich:)

Written question 16, put to me by Mr. Aldrich, has reference to an item of expense for heating the shipping
2596 department. I find upon looking it up that the whole year's charge for 1914 was included in the original accounting and it will be necessary to make a credit to the Larson Company Doublemint accounting of seven-twelfths less four days, which equals $196.03.

(2903) Not all of the Plummer account, referred to in the
2596 19th question, represented advancements to chicle growers accruing prior to July 28, 1914. These accounts were carried along as running accounts and advances made and as chicle was turned in, it was credited to these accounts. Now, these accounts were considered good right up to December 14, 1914. At that time, on account of being unable to get anything more in the way of chicle or any reimbursement of the account of any kind, they were considered no good and charged off and I put them in the account as being charged off. I don't mean to say there was chicle received after the accounting period. It was received during the accounting period. The chicle gatherer was credited on these different accounts on
2597 which the advances were made. There are seven of these accounts and the date of the last credit prior to the time this sum was charged off would vary. These individual accounts were charged with cash advances and other expenses that these accounts were to stand. I mean by that against these parties like James White, M. Herrera. I have prepared a statement from the books of these several seven accounts. I have it with me and am willing to submit it to the accountants for the L. P. Larson Jr. Company, in order that they may look it up and
2598 check it up. I can give them a copy of this statement. That account covers eleven pages without the summary.

Recross Examination by Mr. Mayer.

In looking over those eleven sheets which I now have before me, I will say it shows no credits to any of the
2599 seven persons, made after July 28, 1914, but there are some prior to July 28. All the way through the accounting there are credits prior to July 28, but not after July 28, 1914.

(2904) *Redirect Examination by Mr. Aldrich.*

2600 I derived the charge for the alterations of the main office from the total of the expense account. In the general ledger there is an account entitled "Expense" and in that are a great many items and this charge referred to in question 30,—"Paid to J. L. Kesner $2,470.84", that was in the expense account. This was in the total of the expense account. I took it in the overhead as I took all the other expense items in the overhead. As to how I ascertained it was associated with the main office in some way, I will say it was in the expense account at the main office and I used the expense account in the overhead.

2601 The item of $678.42 for Paris office fixtures was in expense. I don't know by whose instructions it had been put there.

The item of $25.00 referred to in question 44 was $25.00 paid to the Illinois Manufacturing Association War Industry Bureau. It was for a service they rendered regarding the war regulations connected with the war. It was not a gift to the Illinois Manufacturers Association.

Referring to question 46 and the item there referred
2602 to, I will say the gross amount was $8,551.94 and I used twelve-thirtieths of it which was $3,420.17. Looking at the bills from Brooklyn or the report from Brooklyn, there is a report dated November 25, 1918. It was customary to have a report sent in which would be dated between the dates of the 25th and the 25th of the following month, and this report is dated November 25, 1918, and my information is that these are payments between the date of October 25th and November 25, 1918. The date of payment of that item is November 25, 1918 and covered items October 25, 1918 to November 25, 1918. As to why that is not an item of manufacturing cost, I will

(2905) say that was charged into agency expense and it has
2602 always been the custom to put those items in agency expense and consider it as an expense of the business, and I handled it as such.

As to whether item of $1,378.43, purporting to be for proportion of rent of shipping department for October
2603 and November, included in overhead, represents an actual expenditure, I will say, in making up the accounts during the stress of the work, there was so much to do and we had to do it in such a hurry, that that item was overlooked. It means that in the adjustment statement filed, all charges in the overhead for rent in the shipping department were deducted except this item, which was overlooked, of $1,378.43, 2.54% of which is $35.05, the net amount to be credited to the Larson Company's Doublemint accounting. Other charges on overhead for rent of the shipping department were all adjusted in the adjusting statement filed later, which I think was filed before the master March 6. This was the only item that was not corrected of the red items and that is to be corrected, the net amount $35.05. It was a bookkeeping entry, a transfer of one account to another, and does not
2604 represent any money paid out. That would be true of all the items that are included in my overhead that pertain to rent of shipping department. I overlooked this myself personally. In making it up I overlooked this item.

With reference to the further information which I was to give regarding the fire loss in Belize, covered by written question 59, I will say, in the account entitled J. E. Plummer there was charged all cash and advances made to Mr. Plummer, also the pork that was sent down to feed the gatherers was charged to that account, for which he was accountable, and that amount was $13,284.58. In November, 1918, this amount of $13,284.58, which the information showed at that time was the loss, was credited to Plummer and was charged to accounts closed out.
(2906) After the original accounting was filed, I find that
2604 instead of the loss being $13,284.58, it should have been $11,202.57, due to the fact that $2,082.01 of the pork was delivered to a contractor but had not been reported to the Chicago office, so that they could make the proper entry, therefore in the adjusting statement, page 35, item 34, we have charged in there the real loss, $11,202.57,

and the amount charged to the Larson Company Double-
2605 mint accounting is $1700.30. Now, that is correct. In order to cancel the first item in the original accounting, in order to make the correction, we will have to credit back to the Larson Company Doublemint accounting $135.15 to limit the previous item. The item now in the adjusting statement is correct. My information is that the fire occurred August 17, 1918. I believe A. C. Cox could tell you whether we got any chicle after that date that entered into this accounting. I have not the information.

(2907) *Recross Examination by Mr. Mayer.*

2605 Item 34 of the adjustment account filed March 6, 1918,
2605 refers to a loss by fire at Belize, August 17, 1918 of $11,202.57. When the original account was filed that loss was supposed to be $13,284.58. After the original account was filed it was discovered the loss was not quite so great, but was $2,082.01 less than the loss was supposed to have been when the first accounts were filed. That meant that the accounts as filed charged the Larson Company with more than should have been charged. Item 34 on this adjustment account was supposed to correct that error, and the correction made by that item was to charge the Doublemint account with 15.1778 per cent. of $11,202.57 or $1,700.30. The result of the charge made in the original accounts filed before the master and of the chardge made in this item 34 is to leave in the account
2607 $135.15 more than it should be. A clerical error was made. I made it in taking the accounts. The result of that clerical error, if it had not been discovered, would have been to put the Larson Company to a disadvantage of $135.15.

Question No. 16 of the seventy questions put by Mr. Aldrich has to do with an item of expense charged for the year 1914 for heating the shipping department. I now say that 7/12ths less four days of that should be deducted. The question whether or not that deduction of 7/12ths and four days should be made depends on whether or not the court or master holds that the Wrigley accounting should be on an accrual basis or on a basis of payments actually made during the accounting period. The reports which were filed before the master

(2908) were made on the basis of the payment actually made
2608 during the accounting period, and not on the basis of what accrued during that period. The paid basis method was the same method as that previously followed by the Wm. Wrigley Jr. Company in keeping its books. That was its custom before the accounting period and after the accounting period. That is the custom supported by proper accountancy principles, and that method of bookkeeping is in force by other concerns, and was the custom and has been the custom during the last ten or fifteen years to my knowledge.

2609 *Redirect Examination by Mr. Aldrich.*

I did not handle the U. P. S. Coupons in this accounting. All I handled was the overhead. I don't know as a matter of fact that no such principle was applied to the U. P. S. Coupons. My answers with regard to the custom of keeping books and the method on which the Wrigley Company kept its books had to do with the questions of the type covered by the seventy questions that Mr. Aldrich put to me. That is to say, they had reference to the method of keeping agency acounts, expense accounts and overhead acccounts. They had nothing to do with the method of keeping books pertaining to
2610 contingent liabilities. I stated that the expense account was all on the basis of the time of payment and not on the basis of when the items were incurred or accrued. I had nothing to do with the U. P. S. Coupons, and I don't know how that was made up, and I don't want to be understood as asserting it was applied in this particular account as to the coupons. I did not handle the advertising either.

(2909) *Recross Examination by Mr. Mayer.*

2610 No. 31 of the seventy questions had reference to a charge for altering the main office. The amount was
2611 $2,470.84. As to whether that was the amount Larson would have to stand, or whether that is the total amount paid for making the repairs, I will say that was the total amount paid for making the repairs. The amount Mr.
2612 Larson would have to pay would be a per cent of that. That per cent. was 18.69 per cent. The record shows that

the work was ordered in November, 1915, and the last bill rendered for the work was August 12, 1916. The work was done between those dates.

The $25.00 item covered by question 44 was paid to the Illinois Manufacturers' Association in October, 1918. It was not for any advance services. It was for services rendered. The $41,80 item "reserve for taxes" covered by question 44 involved a clerical error made by me. I
2613 took the amount, and I should not have taken it. It was a credit. There was no error on the books. It was an error in my taking it down from the books. There should be an additional charge on that account to Doublemint of $8.28.

With respect to question No. 49, that has to do with a charge on account of rent of the shipping department for October and November. There is actually involved in
2614 that item $35.05. That resulted from a clerical error of my own. It was not corrected in the adjusting statement, from the original statements. None of the errors in my work were intentional. Speaking generally they were due to the fact that we had to hurry so fast to get
(2910) through the work that I was surprised that we did not make a great many more errors than we did.

I don't recall the dates within which we were instructed our work was to be concluded, but I understand we had to have it within a certain time, and we were doing the best we could to get it ready within that time, and therefore we hurried much more than we would if we had a limited time to do the work in. I was working
2615 days and nights and holidays, although I was not working every night. My account in connection with the accounting as filed was done under pressure. I remember distinctly that Mr. Mayer and Mr. Lane said hurry up all the time.

2617 W. W. VINCENT, called as a witness in behalf of L. P. Larson Jr. Company, having been first duly sworn, testified on direct examination by Mr. Aldrich as follows:

My name is W. W. Vincent. I am a public accountant connected with Touche, Niven & Company. I have been the chief accountant for that company in the examina-

tion of the books of the Wm. Wrigley Jr. Company; pursuant to the order of the court, I made an examination of the Books of the Wm. Wrigley Jr. Company. I commenced that examination about May or June of 1920.
2618 We practically finished our work in December, 1920. We have not finished the report.

I have prepared a full report showing the results of our work. The books Mr. Aldrich has in his hands are such reports. I have a copy of this with me. I have most of my working papers here. I did not bring all of the papers with reference to the advertising, because
(2911) the papers are quite voluminous, and I did not think it was necessary to bring them. The report as I have prepared it, is, to the best of my knowledge and belief, a true and accurate report showing the results of my examination of the books of the Wm. Wrigley Jr. Company.

2619 "Mr. Aldrich: I offer, if the Master please, in evidence, a copy of the report to which the witness has referred, that is the Master's copy.

"In that connection I desire to say, if the Master please, that in offering this I do not wish to have it understood that the Larson Company, or I as its counsel, am in all respects agreeing with this report. I do not know that this reservation on the record is necessary. I find myself differing from Messrs. Touche, Niven & Company with reference to the aggregate that should be taxed, credited to Larson & Company, on the advertising account, and their method of disposing of one part of that account; and I am going to later attempt to show that the Larson Company should have a larger credit than Touche, Niven & Company have allowed them in this account. I do not know that that is necessary, but I want to bring myself certainly within the rule that I cannot contradict my own witness.

"Mr. Mayer: If your Honor please, we object to
2620 counsel offering that document in evidence upon any such conditions as he now imposes. He has either got to offer that document in evidence or not. If there are things in there he does not want in this record it is his business to excise that. We have a right to know what it is that he is offering before we are called upon to state whether we object or do not object, and before we are called upon to state the nature of our objections.

2621 "Mr. Aldrich: If your Honor please, I do not want to
(2912) engage in any lengthy discussion at this time. I offer
2621 this entire document in evidence as Touche, Niven & Company's report, as the result of their examination of the Wrigley Company's books. I have made only one reservation, and that is with respect to the Wrigley Advertising Account and their disposition as shown on the last sheet of this report of the fifty per cent of the Wrigley advertising, which gives such prominence to the name Wrigley, and which they have amortized under a three year period, and the amortization of which in my judgment is not a matter of concern to the Larson Company. I need not suggest to this court that you cannot impeach a witness on opinion evidence.

The Master: Where do you differ with Touche, Niven & Company?

Mr. Aldrich: That is a matter of opinion on which I am going to offer opinion evidence.

The Master: That is, you do not agree with their theory in handling the figure?

Mr. Aldrich: That is it exactly.

2623 The Master: As I understand it, Mr. Mayer, Mr. Aldrich does not agree with the theory upon which the accountants have handled the question of advertising."
(2913) The master ruled that Mr. Aldrich had the right to
2624 make the offer in the manner and form made. Mr. Mayer then stated that there were other objections to the report which had nothing to do with expert opinions or with questions of accountancy. He said there were matters in the report that were hearsay, matters which had reference to instructions from counsel or conversations with counsel or interpretations of what is in the record.
2625 Also opinions based upon hypotheses given to the accountants by counsel for the Larson Company.

Mr. Aldrich then stipulated that Mr. Mayer could reserve all possible objections to anything contained in the Touche, Niven account, and the master could rule on it any time, in the final argument or any other time, and that such objections might be based upon any proper legal ground with the same force and effect as though objections were picked out at the time the report was offered in evidence.

2626 The master thereupon admitted the reported on the conditions stated by counsel. That is, that the Wrigley counsel should have the right to object at any time to

any part of the report. (Said report, prepared by Touche, Niven & Company, inscribed, "Report on accounting filed by Wm. Wrigley Jr. Company relative to profits from sales of Doublemint for the period
(2914) from July 28, 1914, to November 12, 1918, was offered in evidence by Mr. Aldrich. It was received in evidence, subject to objection, and marked Larson Exhibit 132.)

Cross-Examination by Mr. Mayer.

I am 45 years old. I have lived in Chicago since 1902. I have been connected with Touche, Niven & Company since January, 1920. Prior to that I was with Alonzo Richardson & Company of Atlanta. They are in the
2627 business of public accountants at Atlanta, Georgia. They have only two offices, both of them located in Georgia. I was with them about two years, from October, 1917, until December 31, 1919. I began my employment with Touche, Niven & Company on January 1, 1920. Before I went into the employ of Richardson I was with Price, Waterhouse & Company. I went with them first in 1902. I was with them about two years.
2628 I was with them again in 1908, for a period of five or six years. They are a very large and nationally known firm of accountants. I went with Richardson directly from Price, Waterhouse & Company, but in the meantime for about a year and a half I was Auditor of Disbursements of the Chicago, Great Western Railroad. I don't remember the date I went with the Chicago Great Western, but with the exception of a year and a half or thereabouts, from 1910 to 1917, I was with Price, Waterhouse & Company. I don't remember what years
2629 it was I was with the Great Western. I think it was before 1910. I was with the Chicago & Great Western, and from 1910 to 1917, I think I was with Price, Waterhouse. I went with Price Waterhouse & Company, the
(2915) second time, in 1908. I worked for them, the second
2630 time, about one year. I worked for Price, Waterhouse & Company three different times. The third time I think was from 1910 or thereabouts to 1917. So the first time I worked for them was about two years, the second time was about a year or a year and a half, and the third time about seven years. The first time was about 1902. I went directly from the employ of Price, Waterhouse &

Company to Richardson's. I think I worked for the
2631 Great Western Railroad sometime prior to 1910. I entered Price, Waterhouse & Company's employment the third time from Alonzo Richardson & Company. I worked for Richardson & Company twice. The first time about four months. About two weeks or ten days elapsed between my employment with Richardson's the second time and my employment at Price, Waterhouse & Company the third time. I went into Richardson's employ the second time from the Chicago Great Western Railroad. There was no interval of time between my quitting that work and going to Richardson. I went from Price, Waterhouse's employ when I went to the Great Western. That was the second time I was employed there. My second employment there was a year or a year and a half; before I entered Price, Waterhouse's employment the second time, I had been with the Inter-
2632 national Harvester Company, for approximately four years.

I do not think there was an interval of time between the time I left the International Harvester Company and the time I went with Price, Waterhouse & Company.

I had no college education. I went to school in a small town in Varnville, South Carolina. The school there was not graded. I quit when I was about nineteen. I have
(2916) never gone to any accountancy school. I do not pretend to be very well up on works of accountancy. I would not say I am familiar with all of the accounting books. My experience in accounting came from prac-
2633 tice and not from reading books. I am not an expert on accountancy.

When I worked for the International Harvester Company I was auditor of their industrial railroads under W. M. Ray. His position was Comptroller. My work there brought me in contact with certain books that were kept in connection with that railroad. I did not make the entries in those books myself. I was with the International Harvester Company from 1904 to 1908. I went with Price, Waterhouse & Company when I left. My work with the International Harvester Company was
2634 accounting work. I supervised keeping the records of the earnings and expenses and all the accounting. I did not introduce the system. The Comptroller did not bother much. The railroads were under my supervision. The railroads did not have any advertising to my knowl-

edge. They did not get any premiums or issue anything known as United Profit Sharing Coupons or anything like that. They did not keep an account which had to do with the question of interest or investment. They
2635 had no account which had to do with good will. When I was with the International Harvester Company I had no accounts that we designated in the books that way. The books were kept on the accrual basis and not on the basis of moneys actually paid out. By accrual basis I mean that earnings and expenses are taken up in which they accrued. That is expense, when the expense is incurred. It is taken up whether it is paid or not. The books I had under me with which I had to do while I
(2917) was working for the International Harvester Company showed moneys paid out.

At the time the money was paid out it would be charged to an account entitled audited vouchers. I would not say
2636 that all the moneys were put under that account. As a general rule we made vouchers for expenditures that we intended to make. I don't recollect that all the disbursements were put under the audited account. I would not say. I do not remember any that were not. As a general thing, so far as I remember, all the disbursements were put under an account called audited account. Generally they were charged to audited vouchers.

I think we had an account with the International Harvester Company and if we wanted to pay them any money we would simply charge their account when it was paid. I kept a Profit and Loss account. We paid
2637 taxes in my department, in this industrial railroad department. As to whether we made any charges on any books before we paid any taxes, I will say we accrued the taxes from month to month. We accrued other things. We had a rent for the lease of tracks, that was accrued. I do not recollect anything else specifically, but if there were any expenses for which invoices were not received, we would take the liability up in the books. I think we had personal injuries. We did not keep an account of contingent liability as such on our books.

(At this time Mr. Aldrich made objection to the scope of the cross-examination on the ground that the interrogation of the witness regarding his practices with the International Harvester Company was not material. The master overruled the objection.)

(2918) As to whether it is customary, speaking generally,
2638 according to my experience in accountancy to keep accounts on the books of contingent liabilities, I will say if it is necessary where companies have contingent liabilities, they take them up. As to whether any company
2639 within my experience or observation has kept accounts on its books for contingent liabilities, I will say the Great Western Railroad kept accounts for personal injury damages. I don't remember what that account was entitled. It has been so long since I saw it. By contingent liability I meant such as a liability for personal damage suits where the amount had not been determined by litigation. I did not mean or have in mind any other kind
2640 of contingent liability. It is not correct to say I never had any experience with any contingent liability account other than the personal injury account that I have referred to. Most companies have contingent liabilities. I will say a great many companies. A great many companies have contingent liabilities in respect of notes receivable discounted. I have another contingent liability in mind at present other than personal injury accounts and notes receivable accounts. As to whether I have any
2641 other experience with respect to showing contingent liabilities on account books, I will say I have an experience of about 15 years in public accounting business. I don't recollect at present a single instance or a single case where a contingent liability account was kept that did not have to do with either personal injuries or notes receiv-
(2919) able discounted. I never had any experience at all with any concern that handled coupons such as United Profit Sharing Corporation's coupons, with the exception of the present case involving the Wm. Wrigley Jr. Company. This is the only case in which I have had any experience with respect to a contingent liability occasioned by the issuance of coupons. When I say that I am acquainted with concerns that keep contingent
2642 liability accounts on their books, due to notes receivable discounted, I mean by that that I have handled books of merchants who in due course of business would receive notes from their customers payable to their own order, and they would endorse them and discount them at the bank, and thus be liable to the bank if the makers did not pay. I believe that is a very common business experience.

The Great Western Railroad Company would meet with accidents from time to time, and persons would be
2643 injured from time to time. I suppose they would claim that it was the fault of the Chicago Great Western. They would make claims for personal injuries. The Chicago Great Western would keep a list of those claimants and the natures of the claims, the extent of the injuries, how the claims arose, and how the accident happened. As to whether that is the account that I had in mind when I refer to the personal injury account, I will say the particulars of the injuries were probably kept in the office or under the jurisdiction of the claim agent. I had nothing to do with that. The accounting department, with which I was connected, was simply interested in taking up the proper liability at the end of the year.
2644 Our entries were made from information received
(2920) from the claim agent as to the probable liability of the railroad where there was an accident. If the claim agent reported in a particular case there was probably no liability, it was probably claimant's own fault, then we would make no entry on the books. If in the opinion of the claim agent the railroad company would not be liable, we made no entry. If he reported, however, that the claim was so doubtful, the railroad company would not be apt to have to pay the claim, we would not take it up.
2645 If the report was that the claimant had an even chance of recovering against the railroad, and the claim agent estimated that we would be liable for $250.00 we would take up $250.00 as a contingent liability. The only time that we would put any figures on our book showing the amount of contingent liability would be to put on our books such sums as were reported to us by the claim agent as representing the probable amount that we would have to pay out. In other words, if he thought we would have to pay out a thousand dollars, we would put that in the personal injury account, and then deduct the thousand dollars from our profits in order to show what
2646 our profits and losses were. We treated it as an expense. We didn't treat it as exactly as though we had already paid it out. We treated it as an expense. We deducted it from our profits. So far as the profit and loss was concerned, when we charged it to expense, it was exactly the same as making a loss out of it. We did not have any percentages or any basis of percentages

on which we made charges on account of these personal injuries. The contingent liability on account of notes receivable discounted is not as a rule taken up in the books. It is simply included in the balance sheet as a foot note.
(2921) The foot note would endeavor to state the facts.
2647 That is to say, that the company had a contingent liability in respect of notes receivable discounted amounting to so many dollars. That amount would be the face amount of the notes receivable discounted. Most companies do not carry it as an account on the books at all. I cannot tell off hand how much time I personally spent in working at the books of the Wm. Wrigley Jr. Company. When Mr. Aldrich asked me as to how much time was spent on the work, what I meant to say was that the work was commenced in June, 1920. I did not understand Mr. Aldrich to ask the question whether I was
2648 engaged personally during that entire time. I was not engaged all of the time between May or June, 1920, and December, 1920. I cannot give an approximate idea without my diary as to how much time I personally spent on this matter, for the reason that Mr. Whitworth was in New York at the time, which was in 1920. Mr. Whitworth was in Europe from about the time this investigation commenced to sometime in September, 1920. During his
2649 absence I had charge of the office, and consequently had to spend some of my time at the office.

The signature to the original Exhibit 132 on page 21 Touche, Niven & Company, is in Mr. Whitworth's handwriting. He participated in the preparation of that report. I think that I wrote practically the entire report. Mr. Whitworth reviewed it after I had finished it. He probably made some corrections. The report was written out at first in longhand by myself, and then it was
2650 reviewed by Mr. Whitworth. There may have been some corrections made. I preserve all my working sheets and drafts of reports. The working papers are re-
(2922) garded as great importance in our lines of business. A first draft of the report is not regarded as any great importance after the report is put in final shape. I think I still have the one that I prepared, that I wrote out.

(Mr. Mayer then asked the witness to produce the original draft written out by him, and all corrections that have been made in it so that there might be at the hearing the draft as originally drawn by the witness and all modi-

fications that were made at any time by anybody. Mr. Aldrich objected.

2656 The master asked the witness as to who laid down the theories upon which the report was made as to the U. P. S. Coupons or any other question that is involced in the accounting.)

The witness continued:

I think that theory was developed from our examination of the records, showing how many coupons have been issued, how many had been redeemed, and the price of the redemption. I think I did most of the tabulations myself, and then consulted with Mr. Whitworth as to

2657 the conclusions I reached. I think the theory that is now put into this report on the subject of U. P. S. coupons is that of both myself and Mr. Whitworth's. I think I first wrote out the theory that is now in this exhibit. We did not consult with Mr. Aldrich before we reached our conclusion. Mr. Aldrich read the report before it was put in final shape. He did not make any corrections or suggestions that I know of. I do not think it is a fact that before I began this work I know Mr. Aldrich's theories. As to whether I have ever seen or heard of

(2923) some written requests that Mr. Aldrich prepared and which he asked the master to give the accountants, I will say I do not know the document to which reference

2658 is made. I do not recollect that I ever heard of any or saw any rules of law that were prepared by Mr. Aldrich and which he stated were the proper principles to be applied in the accounting here.

(Mr. Mayer then called the witness' attention to two documents, one of them addressed to the master asking him to instruct the accountants as to the principles that should be applied and to a memorandum of authorities purporting to support those different points, and asked the witness whether he ever saw such a document before the report, Exhibit 32, was prepared.)

2659 (The master said the accountant referred to was Mr. James Hall, and the witness answered yes.)

I studied this case. I regarded it as important a case as I have ever been connected with. I knew at the very inception that when I began my work on this that the Wm. Wrigley Jr. Company had been directed to account for profits on their Doublemint gum and a certain dress. I was told also that they had filed a report showing that

they had lost the money in the selling of that gum amounting to some several hundred thousand dollars. I was
2660 told that an examination into their books was wanted. I do not know that Mr. Aldrich ever spoke to me about the details. As to whether I knew before I began my work on this what the theories of Larson's counsel were, I will say the only theory that I knew was that his purpose was to ascertain the profits on Doublemint. As to
(2924) whether I knew Mr. Aldrich's theory as to United Profit Sharing Coupons, I will say I do not recollect
2651 whether we discussed the coupons before we commenced the work. I will say that I discussed the theories which resulted in the present filed report with respect to U. P. S.
2662 Coupons, with Mr. Whitworth. I do not recollect whether that theory with respect to U. P. S. Coupons that is now in the filed report emanated with me first or not. We discussed the point. I couldn't tell if I had
2663 before me the documents which I have been asked to produce here, if I had the original draft of the report.

(Mr. Mayer then asked the master to rule on his request. The master said that Mr. Mayer had the papers here which Mr. Aldrich had handed to Mr. Mayer, and that Mr. Mayer had not asked the witness about them.)

I have seen something like the documents to which my attention has been drawn, namely, the instructions which Mr. Aldrich requested the master to give to the court's accountants. Before answering as to whether I saw that before I prepared the report which was the basis of the report now filed, I would like to read the document over.
2664 (The witness stated that he would like to read the document over before answering. Mr. Mayer then stated that he was going to ask the master to rule upon the motion he made a few moments ago directing the witness to produce all his preliminary working sheets and all drafts of reports and modifications which were ever made. Mr. Whitworth interjected to say that they may be destroyed.
(2925) Mr. Mayer then asked the witness whether he had sufficiently looked over the documents. The witness said no, that he just picked it up. The master then ruled
2665 that counsel for the Wrigley Company in this case had a right to have produced for their use on the examination of the witness all papers or records or instructions, whatever they may be, that were given to him or used by him during the time he was working on the report, and stated

that he would enter an order that they be produced on the following morning.

2666 Mr. Mayer then stated to the witness that he wanted all of the working sheets, all of the preliminary reports, all modifications thereof, all written instructions, all reports from anybody else, all documents that the witness had before him or used in his work in this matter.

The witness said that the documents did not belong to him, that Mr. Whitworth was his superior.

Mr. Aldrich stated that he would advise Mr. Whitworth to bring in the documents requested and comply with the court's order.)

The witness then resumed:

2667 I don't know whether I ever saw the written instructions which Mr. Aldrich asked the master to give the accountant and which Mr. Mayer has heretofore referred to, before I prepared my first draft of the report. I do not recollect I ever saw that particular sheet of paper or a copy of it or a duplicate or a memorandum con-
2668 taining the substance of it. I have read so many dif-
(2926) ferent papers, copies of the record and other papers, that I do not recall. I did not see any written instructions or written suggestions. I do not recollect whether I have seen these instructions to which Mr. Mayer has called my attention or not. I don't know whether I saw any such document before or not. I don't recollect this
2669 paper. I don't remember whether or not I had any knowledge before I wrote out my first draft of the report, that Mr. Aldrich's views of the law were substantially as stated on these instructions which I have now before me and to which Mr. Mayer has heretofore re-
2670 ferred. I think I knew Mr. Aldrich's theory on the question of interest on capital before I prepared this report. I probably got that information from Mr. Aldrich. I had information as to what Mr. Aldrich's theory was with regard to other subject matters that are referred to in my report before I wrote out the first draft of it.
2671 Mr. Aldrich objected to Mr. Wrigley's salary. The question of income tax, I believe, was one item that was discussed. I do not recollect any other items as to which I knew Mr. Aldrich's view of the law before I prepared the first draft of the report. I do not recollect that I knew what Mr. Aldrich's view as to advertising was before I wrote out my first draft of the report. I cannot

tell you how often I met Mr. Aldrich while we were working on this case, before I prepared the first draft of the report. It was not very frequently. When we were engaged on the work at the Wrigley office, it would probably be months that I would not see Mr. Aldrich.

(2927) Thursday, November 17, 1921. 10:30 A. M.

2673 (By agreement of the parties, the witness W. W. Vincent was withdrawn temporarily from the stand and Wm. Wrigley Jr. was recalled for cross-examination by Mr. Aldrich. He testified:

I have been sworn in this case before. I took over the Zeno Company in 1911. At that time the good will of my company was represented by seven millions and a
2674 half common stock. Seven and a half millions of common stock was based on the fact that we expected to be able to earn dividends on that much money. As to what relation, if any, the amount of that capital stock representing the good will bore to advertising that I had done prior to that date, I will state I don't remember that it was mentioned at all. I don't remember it was mentioned. I believe that the advertising figure as shown in the record here, while not reaching that amount, was ap-
2675 proximately that amount. I do not think we had done seven and a half millions of advertising. We had a great many assets, hundreds of thousands of dollars of assets represented by common stock, you know; physical assets.

(Mr. Aldrich then asked the witness if the advertising account done prior to the date of the reorganization of Mr. Wrigley's Company was capitalized at that time. Mr. Mayer objected. The objection was overruled.)

2677 The witness resumed:

I can safely say that the advertising account done prior
(2928) to the date of the reorganization of our company was not capitalized at that time. That is, as I understand it, Mr. Aldrich wants to know whether or not we took the total account of money spent for the advertising up to 1911 and capitalized that into common stock. The advertising up to that time would not amount to seven and
2678 one-half millions. I would say that the amount we had spent for advertising was considered in fixing the amount of common stock. Our physical assets were not embraced in a million and a half of preferred stock. I should say,

if I remember correctly, it is a long time ago, we paid the Zeno Manufacturing Company two and one-half millions for their physical assets, so we must have had more than a million and a half. We paid that in stock. We did not pay it in money. It was a combination. As to what, if anything I had to do with the institution of the Doublemint litigations, referring to the litigation com-
2679 menced in June, 1915, against the Larson Company, I will say I was president of the company and I presume it was referred to me at that time. I think that Mr. A. G. Cox was looking after that end of the business. Mr. Cox verified that bill. The earlier bill I verified. I knew of the institution of this suit. I have supported the Wrigley suit against Larson throughout.

2680 Referring to my testimony in the Du Wane Norris case, it must have been pretty close after I started, I should say in 1894, somewhere along there, 1892, when the company had less than four thousand dollars. I am not advised what detective agencies my company has employed during the pendency of the Wrigley-Larson litigation. That's a matter left entirely with our attor-
(2929) neys. I am not able to say whether the bills for such detective agencies come to my office or to the office of the Wrigley Company. I have never seen any. The treasurer, I should say, is the person of the Wrigley Company who would know of the employment of detective agencies. As to what detective agency it is that Mr. Aldrich has advised has been employed during the pendency of this litigation and has made certain investigations at Rochester, New York, I may say I have no knowledge on the subject. If there is any one who knows about it,
2681 this Mr. Cox would. I should think he would be the proper man to O. K. a bill of that kind. If detectives were employed by our attorneys, it will be by both Mr. Mayer and Mr. Lane. Both of them are as one in this case. I do not know from whom we are getting bills of that character. Mr. Cox would know if he ever O. K'd. such a bill.

2682 W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer:

I have complied with the request of the master to have here this morning all memoranda that I used in making up Larson Exhibit 132, including all working sheets, preliminary and otherwise, and the original draft of the report which I said I wrote out in my own handwriting, and all modifications of it, all instructions that I may have had, and current sheets or any other matters that I used in connection with the making up of the report that has been filed as Larson Exhibit 132. We have all the records here. They are contained in those manilla envelopes Mr. Whitworth now hands me. I have before
(2930) me all documents that I was to produce. None have been destroyed at any time to my knowledge. I have
2683 here the original draft of the report in my handwriting to which I testified yesterday.

(The original draft of report of Touche, Niven & Company was marked for identification Touche Exhibit No. 1.)

There are twenty-five sheets of papers in Touche No. 1 for identification. The stenographer who is taking this testimony has numbered the documents with a numbering machine, and numbered them correctly. There are twenty-five sheets, including a separate sheet numbered by the
2684 stenographer as "17."

(Mr. Mayer then said he would refer to the Touche Exhibit for identification No. 1 as "Touche No. 1," and the witness stated he would so understand Mr. Mayer's questions.)

2685 Touche No. 1 is in my handwriting. Outside of the stenciled page numbers just put on in my presence, it is all in my handwriting. There are numerous interlineations and alterations on that document. I could not tell you when the last alteration, change or interlineation was made in that document. Mr. Whitworth and myself have changed it from time to time to make it read smoothly. There are no changes in it excepting such as were calculated to make the document read more smoothly.

As to whether the report which has been filed here
(2931) before the master, Larson Exhibit 131, is exactly the same as Touche No. 1 as it now appears, I will say I

think not, for the reason that there are probably some of the original sheets attached to the first typewritten sheets which I have here. The reason they are attached is because in the original typewritten sheets we did not care to write the attached, we simply attached the sheets
2686 here and wrote them finally. When I first wrote out the report it contained more pages than Touche No. 1. The additional pages are here. I will produce them. When I wrote the draft originally it contained some pages not
2688 among the 25 sheets in Touche No. 1. There were 32 pages in the first draft as I originally prepared it. I have produced only 25 in Touche No. 1. I have the other seven pages here. My first draft was typewritten. The 32 original pages of my original draft as prepared by me were struck off on the typewriter. I have a typewritten draft.

(The witness produced the typewritten draft. It consisted of 56 pages. It was marked Touche Exhibit 2, the sheets being numbered consecutively 1 to 56.)

(Mr. Mayer informed the witness that from time to time he would perhaps refer to the said Touche Exhibit 2 for identification as Touche Exhibit 2 or Touche No. 2, and the witness said he would so understand.)

2689 Touche No. 2 has now been correctly paged in my presence, and consists of 56 pages. I think if Touche Exhibit 2 is compared with Touche Exhibit 1, you will find No. 2 just like No. 1, except there will be contained
(2932) in No. 2, twelve pages that I originally wrote in the original draft in which I said would now be found in Exhibit 2: And there ought to be in Exhibit 2, seven of the original sheets in my handwriting that were con-
2690 tained in the original or first draft made. Exhibit 2 is on yellow paper. My whole original draft was written on yellow paper, and I think it was all written in pencil. Page 2 of Touche No. 2 is not a part of my original draft. Page 2 of No. 2 was prepared after the first typewritten copy was made. It is simply a reproduction of the figures which appear on the original. By the original I mean No. 1, and the sheet which is now No. 2 in Exhibit 2 was never any part of my first draft.

2691 The next yellow sheet in Exhibit 2 is numbered 6. I do not think that sheet was part of my first draft. The handwriting on sheet 6 is my own. There is nobody else's handwriting on it. It is all in lead pencil. The

handwriting on sheet numbered 2 is all in my handwriting; with the exception of two figures in red ink, it is all in lead pencil. Page 2 of Exhibit 2 has certain corrections on it. Those corrections are in my handwriting, with the exception of the date there, that looks like Mr. Whitworth's. By that I mean that originally the page 1 of Exhibit 2 contained in typewriter the following date, "Chicago, January ..... 1921". Some one has written in
2692 lead pencil over the word "January" the following, "Oct., 25". That looks like the handwriting of Mr. Whitworth. Mr. Whitworth's full name is C. R. Whitworth. He is the gentleman who was here yesterday during my entire examination. He is here now.
(2933) Outside of that October 25 on page 1, the balance is in my handwriting with the exception of the identification marks just put on it by the stenographer.

Exhibit 2, page 2, is all in my handwriting. So is page 3. I am referring to the interlineations or erasures. I did not do the typewriting. All the corrections on page 4 of Exhibit 2 are in my handwriting. With respect to page 5, the interlineation "have been objected to by" are Mr. Whitworth's. The words that I refer to are contained in the following sentence as originally written: "The inclusion in expenses of this and some of the other items Mr. Aldrich may object to." The words "may object to" are erased, and before the words "Mr. Aldrich" Mr. Whitworth has inserted the words that I quoted, namely, "have been objected to by". The balance of page 5 is in my handwriting except what is typewritten. Page 6 is all in my handwriting.
2694 As to whether there is anybody else's writing on page 7 but mine, I will say I think this word "apportioned" does not look like mine. That's probably a correction that the comparers found in comparing the original with the typewritten sheet. There is nobody's writing on page 8 but mine. The numbers of the pages that I have been referring to are those that have just been put on in consecutive order. Some of these pages have numbers on that do not run consecutively, but those are our original numbers.

On page 9 everything is in my handwriting excepting the word "called". Number 10 has no changes. No. 11 is a yellow sheet. That is one of the original or first drafts that I wrote. It is all in my handwriting. It
(2934) was originally No. 12.

Taking the next sheet in No. 2, which has now been marked 12, there is nothing on that sheet that is not in my handwriting. No. 13 is a yellow sheet. It is entirely in lead pencil, and in my handwriting. That was one of the first drafts. It is the second sheet of the first draft. There is nothing on page 14 that is not in my handwriting except the pencil notation on the bottom "(Stenog turn to page 11)", which is in Mr. Whitworth's handwriting. That page, 15, is all in pencil and on a yellow
2696 sheet. It was originally numbered 14, and was part of my first draft. It is all in my handwriting. Page No. 16 is on a yellow sheet. It is in lead pencil, and in my handwriting. It was originally numbered 15, and was the original page 15 in the first draft that I prepared.

Page 17 is in lead pencil entirely, and on a yellow sheet. All of it is in my handwriting. It apparently was not part of the first draft because it is not numbered.

Page 18 of Exhibit 2 is also on yellow paper. It is entirely in lead pencil and in my handwriting. I do not think it was part of the first draft because it does not bear the original page number. There is nothing on page 19 not in my handwriting. All of page 21 is in my
2697 handwriting with the exception that at the top of the page it bears the words "called to here." There is a word "Wrigley's" in Mr. Whitworth's handwriting preceding the word "gum". That insert of Mr. Whitworth's is in the sentence reading as follows: "Another difference, which should be considered in any comparison with coupons of the United Cigar Stores, is that
(2935) every purchaser of Wrigley's gum receives a coupon whether it is wanted or not, whereas with the products of United Cigar Stores, the coupons are taken by only those customers who desire to save them.

The corrections on page 22 of Exhibit No. 2 are in my handwriting. There are no corrections on page 23. Page 24 is a yellow sheet an it is all in lead pencil excepting one red ink figure. The handwriting on that sheet is mine. It was originally numbered 23. It was a part of my first written draft. The corrections on page 25 are in my handwriting with the exception of the fol-
2698 lowing words written in ink: "Invested capital for the year 1914-15, but excluded in 1916".

I do not know in whose handwriting those words are. That is simply a correction that was found in compar-

ing the original with the typewritten sheet. The balance of the changes on page 25 are in my handwriting. The ink correction that I have just read into the record is inserted next following the following words: "For
2699 example, the amount of $9,000 invested in Wrigley Ltd. London, was included in it." Next page, 26, is a yellow sheet. It is all written in lead pencil. All in my handwriting.

(2936) It was part of the original first draft; page 25. The
2700 changes on page 27 are all mine. Pages 28 and 29 are both on yellow paper; all of both of said pages are in my handwriting in lead pencil. Neither 28 nor 29, apparently, was a part of the original first draft. I say that because I find no original page numbers on them, and I numbered the original or first draft consecutively. Page 30 is also on yellow paper. There is some writing
2701 on it that is not mine. Page 30 was a part of the original first draft I made. It was numbered 27 of that draft. All the changes on page 31 of Exhibit No. 2 are in my handwriting except the word "Capital" in ink in the third line from the bottom. That is apparently a correction of a typewritten word. All the changes on page 32 were made by me. All the changes on page 33 were made by me in my writing. Page 34 is a yellow sheet in pencil. It is all in my writing. I do not think that was part of the original or first draft. Page 35 is also a yellow sheet, all in my writing. Page 35, I think,
2702 was part of the original draft. I never concluded the original draft. Page 35 was written after. That conclusion was not dictated to me by anybody. There is nothing in either one of these reports, that is to say, Touche No. 1 or Touche No. 2, that was dictated to me by anybody. As to whether it is all my original thought, and my original language, I will say that during the course
2703 of the examination I conferred with Mr. Whitworth, but it was not dictated to me. Page 36 is a yellow sheet in lead pencil. It is all written by me except the words "to be the results from" in the third line from the bottom of page 36. Those words are in Mr. Whitworth's writing. There are alterations on page 37 which were not made by me. I refer to the black pencil figures on

(2937) page 37. Those black pencil figures look as if they were made by Mr. Hagberg, an assistant in our office. He was over at the Wrigley Company working on their

books for a considerable time. He aided me. His name is John S. Hagberg. He is still with Touche, Niven & Company. Besides Mr. Hagberg, myself, Mr. Whitworth, Mr. Brand, William Theobald and Joseph P. Martin spent time at the Wrigley Company examining their books and records. Theobald and Martin are still with us.

I did not bring with me the time sheets or our records showing how much time was spent by the employes of Touche, Niven & Company or their representatives at the William Wrigley Jr. Company.

(Mr. Mayer asked the witness to produce these records at the next session. Mr. Aldrich objected. The objection was sustained.)

2705 There are red pencil figures on page 37 of Exhibit 2.
2706 The changes on page 39 are apparently in the handwriting of Mr. Hagberg. Those on pages 40 and 41 are mine. Those on pages 42, 43 and 44. I think are Mr. Hagberg's. The words "sufficient binding space at right hand" appearing in pencil on page 45 are mine. The changes on page 46, I think, are Mr. Hagberg's. The changes on 47 are mine. The changes on 48 are mine with the exception of the footing, which has been changed by some person other than myself. I refer to the footing in both the first and last columns. The figures at the top in the first and the last columns of page 49, and also at the bottom of the page in the first and last col-
2707 umns, are in Mr. Hagberg's handwriting. The changes on page 50 are mine. I do not see any changes on page 51. I have now gone through the entire 56 pages of
(2938) the document, and have pointed out everything that is in it not in my handwriting. I think the report filed with the master as Larson Exhibit 132 is supposed to be exactly like Touche No. 2. So far as I know, no further changes or corrections were made than I have already disclosed. If there were any, I would be likely to know it.

In the envelope from which I took out Touche No. 1 and Touche No. 2 are some miscellaneous papers. The first of these miscellaneous papers is a printed document entitled "Petition for re-hearing on behalf of respondent in the United States Circuit Court of Appeals for the Seventh District, No. 2822," and the title is "In re Petition of L. P. Larson Jr. Co. for a writ of mandamus," and then the balance of the title, and "Isaac H.

Mayer and Wallace R. Lane, Solicitors for William Wrigley Jr. Co", and on top in ink handwriting appears the following "Mr. Charles H. Aldrich, 1035-209 South LaSalle Street".

(Mr. Aldrich, at the request of Mr. Mayer, admitted that the paper just described is a petition for rehearing filed by the Wm. Wrigley Jr. Co. in the Circuit Court of Appeals in connection with the mandamus suit herein. Mr. Aldrich also admitted that there was contained in the envelope which the witness has produced, the first opinion of the Circuit Court of Appeals in the pending litigation.)

2709 There was enclosed in the same envelope produced here a printed motion to amend order heretofore entered herein so that Master in Chancery Charles B. Morrison and opposing counsel may know that this court has held (2939) that the defendant should file account as prayed, the title being in the circuit court of appeals here, and the brief being by Mr. Aldrich, Mr. Reed and Mr. Haight.

(At the request of Mr. Mayer, Mr. Aldrich admitted that the document just referred to was the motion which Mr. Aldrich presented to the circuit court of appeals asking that court to specifically instruct Master Morrison to order an accounting of the Canadian and Australian corporations' profits. Mr. Mayer then asked the witness as to where the remaining papers were that were in the envelope he had produced. The witness thereupon handed Mr. Mayer five yellow sheets of paper 2710 entitled "Notes re conference with Mr. Aldrich, 12/3/20" the title being in the witness' handwriting.

Said document, consisting of five yellow sheets, produced by the witness and entitled as described, was marked Touche Exhibit 3 for identification, these sheets being marked consecutively from 1 to 5 by the stenographer.)

The next document I took out of this envelope that I produced here consists of eight typewritten pages, the last two of which appear to be statements of certain accounts. The document is dated Chicago, November 9, 2711 1920, and is entitled "Memorandum for Mr. Whitworth."

(Said document, consisting of 8 typewritten pages dated and entitled as stated, was marked Touche Exhibit 4 for identification.)

(2940) I prepared Touche No. 4.

There was also in that envelope a yellow sheet of paper on which there are some figures on one side and some language in lead pencil on another, which I now hand Mr. Mayer. The document seems to be some notes and memoranda. It is my handwriting.

(The yellow sheet just described was marked Touche No. 5 for identification.)

There was also in that envelope a paper which I now
2612 produce, which purports to be a letter or a copy of a letter from Mr. Aldrich to Touche Niven & Company dated October 19, 1921.

(Said copy of letter so dated and addressed was marked Touche Exhibit 6 for identification.)

(Mr. Aldrich, at the request of Mr. Mayer, stipulated that there was enclosed in the envelope which the witness had produced a copy of the decree of reference entered by Judge Carpenter, October 4, 1918, in the case on hearing.)

There was also in that first envelope a copy which I now hand Mr. Mayer, which I think is a duplicate copy of Touche Exhibit 4 for identification, except there is only one statement there, making the document seven pages instead of eight pages.

I now produce another document that was in that envelope consisting of three typewritten documents with
2713 some pencil notations at the bottom of the third page and also the fourth page, being a yellow sheet in lead pencil writing. It is entitled "Memorandum for Mr. Whitworth."

(Said document so described was marked Touche Exhibit 7 for identification.)

(2941) There was also in that envelope a statement which I now produce entitled "Statement of coupons issued and redeemed by William Wrigley Co., during the period from September 1914, to December 31, 1918," in the upper left hand corner of which appears in pencil, "Exhibit M". That's a copy of one of the Exhibits in the report filed before the master filed by Touche Niven & Company.

2714 (Said document so entitled was marked Touche Exhibit 8 for identification.)

The next document that was in that first package of papers is "Memorandum, Wrigley vs. Larson." The

next word is "Advertising". Consists of three typewritten pages. My recollection is that was prepared by one of the partners at the New York office. It was not prepared by me, and I think not by Mr. Whitworth. It shows a change of views with regard to advertising.

(Said document so described was marked Touche Ex-
2717 hibit 9 for identification.)

2718 Thursday, November 17, 1921, 2:00 P. M.

W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer:

I now produce out of the first envelope which I produce here pursuant to the direction of the master such of the contents as I have not yet produced, and hand them to the stenographer so they may be marked for identification purposes.

(Thereupon the first of the documents so produced
(2942) being Mr. Aldrich's request of the master to instruct master's accountants as to the law and citations of authorities in support thereof, was marked for identification Touche Exhibit 10.)

(The next of said documents, being a copy of decree in the case of Wm. Wrigley Jr. Company vs. L. P. Larson Jr. Company, No. 488, was marked for identification Touche Exhibit 11.)

2719 (The next of said Exhibits being miscellaneous papers consisting of 12 sheets used by Mr. Vincent, was marked Touche Exhibit 12 for identification.)

(Mr. Aldrich stipulated, at thet request of Mr. Mayer, that among the papers so produced was Touche Exhibit 10 for identification, which is a copy of the written instructions which Larson's counsel asked Master Morrison to give to the accountants appointed by the master, Messrs. Marwick, Mitchell, Peat & Company, and also of authorities in support of those instructions.)

The memorandum on the first page of Touche Exhibit 10 in pencil reading "Received Oct. 7th, 1921," is in my own handwriting. I made the memorandum on that date. Touche Exhibit 9 is not dated. It is my recollection it was prepared sometime in the fall of 1920.

2720 My original report, that is, Touche No. 1, was written out by me about September 1920. I think it was finished

up probably in January. The second draft, Touche Exhibit 2 for identification is dated in January, 1921,
(2943) and I presume was written during that month. There are no other drafts of the report than those which I have produced here.

(It was stipulated that among the papers produced by the witness there was also a printed answer to petition an argument for re-hearing filed by counsel for the Larson Company in the Circuit Court of Appeals here in the mandamus proceeding, No. 2222, and in the appeal proceeding No. 2831.)

(Mr. Mayer then asked Mr. Aldrich to stipulate that Touche Niven & Company were furnished with a complete record of Wm. Wrigley Jr. Company against L. P. Larson Jr. Company with the evidence taken up to date, and asked Mr. Aldrich whether he remembered the date when he furnished that to Touche, Niven & Company. Mr. Aldrich stated he did not, that whenever Touche, Niven & Company wanted anything for the preparing of figures, they asked for it and he sent it down, that he intended that Touche, Niven & Company should have everything they wanted.)

2721 (The document entitled "Motion to permit accountants to examine books of L. P. Larson Jr. Company", being a copy of pages 2390-2393, inclusive, of the accounting record, was marked for identification Touche Exhibit 13.)

I have produced here some additional large envelopes containing papers. These envelopes contain all the papers I had in connection with this work of making up the Touche, Niven & Company report. There are six of these envelopes in addition to the one I have already been examined upon.

(2944) (The large envelopes the witness referred to con-
2722 tained working papers of Touche, Niven & Company were marked for identification Touche Exhibits 14 to 19, inclusive.

It was then stipulated that these additional six wrappers, together with the original first package, with their contents were to be retained by the master with the understanding that they were subject to examination by counsel for the Wrigley Company in the presence of the Larson Company or a representative of Touche, Niven & Company.)

My report covers, among other items, one known as overhead. I checked off the books, accounts and records of the Wm. Wrigley Jr. Company on that subject. In making that examination I went to the journals. I made that examination for the purpose of ascertaining the facts with reference to the profit on Doublemint, and that included a desire on my part to ascertain whether or not the accounts filed by the Wm. Wrigley Jr. Company before the master were truthful, honest and correct. If the source of the entry in the ledger indicated that it was posted from the journal, we, of course, referred to the journal. We examined the general ledgers of the
2724 Wrigley Company for the purpose of finding out what should be included in overhead, and we found that some of the entries in the general ledger were posted there from journal entries. I would not say that all the entries came from the journal. We did not go to the original source for each and every entry that was posted to the ledger. We went to sufficient of them to satisfy ourselves as to the correctness of those ledger entries.
(2945) We examined in that connection a good many entries. Whatever mistakes were found we intended to record and make a memorandum of in this report known as Larson Exhibit 132. It was my understanding that Master in Chancery Morrison, before whom I am now testifying, heretofore appointed Marwick, Mitchell, Peat & Company to examine certain of the books and records
2725 of the Wm. Wrigley Jr. Company and make a report. I have seen that report, which is a preliminary report. I have before me now that report. It is dated June 17, 1920. I don't remember when I first saw that Marwick, Mitchell, Peat & Company June 17 report, but I think almost immediately after Mr. Aldrich received it he turned it over to us. I examined that report before I wrote out the first draft of my report.
2726 There was not contained in any of those seven packages produced here pursuant to the master's direction, a copy of this Marwick, Mitchell, Peat & Company June 17, 1920, report. I can think of no other document or record or writing that I had before me or used or relied upon in connection with the preparation of the Touche, Niven & Company report.

(The master stated that at the time copies of the Mar-

wick, Mitchell, Peat & Company report were turned over to counsel on both sides a copy was left with the master.)
2727 (Mr. Aldrich stated that he did not understand that the order of the master included the Marwick, Mitchell, Peat & Company report.)
(2946) I know that Mr. Aldrich recently prepared written questions to be answered by Mr. Paine. Whether it was seventy or more, I don't know. As to whether I had to do with the preparation of the written document which contained the seventy written questions propounded to Mr. Paine, I will say I think they were questions answered from this report that was made, the questions were on items contained in this report as I understand it. By this report I mean the Touche, Niven & Company
2728 report. I did not participate in the preparation of those seventy written questions. I was not consulted with reference to them. I happened to be in the room when Mr. Aldrich asked Mr. Paine some of the questions. I have never seen those seventy written questions. I do not know of any other person with whom I conferred with respect to any of the matters involved in the Touche Niven & Company report, Larson Exhibit 132, other than persons connected with the Wm. Wrigley Jr. Company, and Mr. Whitworth, Mr. Niven and Mr. Aldrich. I was never present at any interview at which anybody else than those named was present, and which any of the matters referred to in my report, Larson Exhibit 132, was discussed.
2729 As to how many books of the Wm. Wrigley Jr. Company I personally examined, I will say I examined a private journal and a private ledger for each year they had one, for 1914, 1915, 1916, 1917 and 1918. I also referred to the cash book from time to time and to, I believe there was a journal that I examined, a journal. While I was working at the Wrigley Company's offices, if I wanted any book or record, I asked Mr. Eckerly or Mr. Ellis or Mr. Gill, the treasurer. As to whether, whenever I asked for anything it was given to me, I
(2947) will say that it was not in the beginning. I wanted
2730 to say that we asked for the papers with reference to the advertising that Mr. Stanley had, and those were refused until counsel for the Wrigley Company, before the master, agreed on Mr. Stanley producing them. I am referring to the fact that on one occasion I asked for

Mr. Stanley's working sheets. He told me he would have to take it up with counsel. The matter came up between counsel and the master, and they were furnished to me. I think that whatever I wanted there I actually got. I do not remember that we were refused anything.

2731 I think that the books there, as a general thing, were kept in the ordinary usual course in which books of concerns of that type are generally kept. I recollect no difference between their books and other books. As to whether their methods of keeping the books was such as I would expect to find by concerns of that type, I will say there was some items, taxes for instance, I think, that the company takes up as and when they pay them instead of taking up the liability as the taxes accrue. That's a subject I have commented on in my report. I do not recollect any other particular items that I found on the books. As to whether, outside of that item, I found the books kept in due course of a business of that type, I'll say I do not recollect any other particular items at this time.

I have never examined the books of account of the L. P. Larson Jr. Company. I do not know how their books are kept.

As to whether the Wm. Wrigley Jr. Company kept their books and records in such form and such method as I, as an acountant, would expect to find them,

2732 I will say our investigation was not with a view of (2948) criticising the system. I know, in a general way, what their system of keeping books and records was. But I don't know whether they took up liabilities at the end of the year. With the exceptions I have mentioned, so far as I know and so far as I observed from my examination of their books and records, the method they pursued in keeping their books and records was, that I, as an accountant, would expect to find in that type of business. By exceptions I refer to taxes and what other liabilities are not brought onto the books. I have not

2733 any other liabilities in mind that were not on the books which I think perhaps should have been, as I said our examination was not for that purpose. It would have been impossible for me to have made the examination which I did in fact make without knowing what the Wrigley Company's method of keeping books was. In so far as we made an examination of the books of the Wrigley

Company, I became acquainted with the method used by the Wrigley Company in keeping its books and records. I think before I prepared my first draft of the report I had before me the Marwick, Mitchell, Peat &
2734 Company report. We used some of the figures of the Marwick, Mitchell, Peat & Company report, principally the U. P. S. coupons computations. I don't remember any other figures of that report which we used. I do not think we used any of the Marwick, Mitchell, Peat & Company theories. I do not remember any of their language or any of their reasoning that we used.

As to whether I checked up to see whether the figures that were in this Marwick, Mitchell, Peat & Company report were correct, I will say we tested the figures so as to satisfy ourselves generally that they were in accordance with the records.

I do not think there was any subject to which I had
(2949) Mr. Aldricht's views before I wrote my first draft of
2735 the report. The views expressed in the first draft were my own, uninfluenced by anything I heard up to that time from Mr. Aldrich. When I wrote the first draft of this report I had not been instructed by anyone to single out the Frank F. Pulver item.

As to whether I did that on my own initiative I will say I saw from reading the record that there had been considerable talk about the Pulver Notes, and I understood what it covered, and did not consider it a proper charge in the Doublemint accounting. I think I have stated my understanding of what Frank F. Pulver was paid, in the body of the report. I think that understanding as contained in the first draft, has not been changed. I have no reason for recommending the elimination of the Pulver payment other than that stated in the report
2736 filed with the master, Exhibit 132. I think before preparing the first draft of the report or the report which is now filed with the master, I read over an agreement between the Wm. Wrigley Jr. Company and Pulver. I got it, as I recollect, from Mr. Eckerly. I took excerpts from the agreement. Those excerpts are evidently contained in these packages which I have produced. I could not put my finger on those excerpts right now. I do not know whether there was an inventory of the assets purchased by the Wm. Wrigley Jr. Company from Frank F. Pulver and his companies, and on account of which the

$250,000 00 was paid, attached to the agreement or not; but my report says that the Wrigley company acquired certain assets consisting of trade marks, business, furniture, fixtures, machinery, tools and merchandise. I
2737 made no investigation as to the quantity of furniture and fixtures, machinery and tools and merchandise. I
(2950) was not interested. For the purpose of my report it did not make any difference. The liability was one existing prior to the accounting period, and therefore it should have been taken up on the books. As to what I mean by should have been taken up on the books I will say it should have been contained in the books as a liability at the time the agreement was made. In my opinion the fact that the payments made to Pulver during the accounting period were in discharge of an obligation created before the accounting period, and therefore those payments should be excluded in this accounting. In my
2738 opinion, if a merchant buys a business on December 31 of a year and agrees to pay $100,000.00 cash at that time and $150,000.00 cash in the following year, the entire liability should be taken up at the time that the agreement, obligation, is undertaken regardless of what becomes of the business purchased. It is my opinion as an accountant that if a grocery store is bought out today, consisting of trade-marks, furniture and fixtures, machinery and tools, and merchandise, and $100,000.00 cash is paid on account of that today, and I note is given by the purchaser for $150,000.00 representing the balance of the deferred payment, payable one year from today, the entire liability should be stated on the books at the time the liability is incurred; otherwise, the books
2739 do not state the facts. As to whether the entire amount of $250,000.00 should be treated exactly the same as though it had been paid out today in cash, I will say it would not be treated in exactly the same way. Your cash would be depleted by your cash payment, and your liabilities would be increased by the note that you issued.

As to whether or not there should be charged off today the whole $250,000.00 or whether part of that $250,-
(2951) 000.00 should carried into the assets of the next year, I will say: If you took over assets equivalent
2740 to the liabilities that you assume, you would naturally set up the assets and the liabilities at the time you made the agreement. If I was trying to find out the profit

made by a merchant during the year 1920, and I found that in November, 1919, he had bought out a business, including trade-marks and furniture and fixtures and machinery and tools and merchandise, and that he paid $100,000.00 on account at the time he made the purchase in 1919, and that in the year 1920 he paid the deferred part of the purchase price ofg $150,000.00—as to whether that payment of $150,000.00 in 1920, would have any bearing on the profits made during the year or as to whether that payment should be eliminated, I will say if that payment was for the acquisition of trade-marks and patents, merchandise, furniture and fixtures, it would not be regarded as an expense. I would regard it as a payment for the assets that I acquired. They would be assets in addition to what I had before. I
2741 would increase my capital acount by $250,000.00. Capital account is supposed to be, I think, the capital invested in the plant, machinery, furniture and fixtures, and that kind of thing. Capital account means the investment account. As to whether, if I bought out a business, I would regard that as increasing my capital or investment account to the extent of what I paid for the business, I will say it would depend on the class of assets that I acquired.

Supposing the class of assets was furniture, fixtures, trade-marks, machinery, tools and merchandise of a going concern in the same line of business and that which I were conducting, I would regard the merchandise as
(2952) current assets, as distinguished from permanent capital.

If I bought out a man's business and paid $250,000.00 for it, as to whether I would increase my capital account
2742 by $250,000.00 would all depend on what I received for my money. I do not mean that would depend on what became of a business I bought, it would depend on the assets that I acquired for the payment of the money.

As to what I assumed became of the Pulver business in making my report filed with the master, I will say it must have been merged with the Wrigley Company.

If I paid a man a certain sum every year for keeping him out of a competing business, I do not know how I would charge the payments. If I gave him notes, I would
2743 set up the notes as a liability. If I made a contract with A not to go into my line of business for the next

five years, and I gave him $10,000.00 a year for each of the next five years, then as I made a $10,000.00 payment during each of those years, the conservative policy would be to write it out to profits and loss. In other words make it a special deduction from profit and loss. That is not another way of saying I would treat it as an expense. To deduct it from profit and loss is not exactly the same thing in effect as though I charged it to ex-
2744 pense. For practical purposes, deducting $10,000.00 a year in the manner described from the profit and loss account, is not in effect the exact equivalent of charging those payments to expense. I would say the effect so far as depleting the surplus is concerned is the same, it is equivalent to paying a dividend. It has the same effect as paying a dividend. If I had given notes for those
(2953) deferred payments, I would treat them as liabilities. If the notes were not paid when they were due, I would not make counter entries as though the amounts of the notes were profits. I would not have to. If I did not pay the note that liability existed whether I paid it or not, unless the man agreed to cancel the note.

In preparing the report I did not assume that the claim of the Wm. Wrigley Jr. Company against the United States Government on account of the Brooklyn moving expense had been allowed. I assumed that it had been filed, but I made no assumption as to it being allowed or as to the final payment. My conclusions on that subject were uninfluenced by the question as to
2745 whether or not the claim would or would not be allowed.

If I was trying to find out the profits of a merchant made in the year 1918, and it appeared that in June, 1917, the United States Government commandeered that merchant's factory for war purposes, we being then in the war, and that the merchant had immediately secured another factory and immediately commenced to build, and that he expended $100,000.00 in connection with that removal, and that after he had already expended $100,000.00 in that removal the commandeering orders were rescinded, I would say that as to whether the recision of the commandeering order would affect the question as to how the $100,000.00 should be charged would be a question of law as to whether the government would be liable for having made the corporation incur that expense.

2746 I cannot answer whether, as an accountant, in determining the profits of that merchant, his loss arising out of the $100,000.00 expended in that way would be any (2954) the less because the commandeering order had been rescinded, I was only concerned with the fact that the Wrigley Company had a claim filed with the government for the expense that they had incurred.

I do not know what disposition was made of that 2747 claim, and I never inquired. If this merchant we have been referring to did move into his new premises in the year 1918, after having already expended, say, $100,000.00 because of the commandeering order—as to whether it is my opinion that the $100,000.00 must be ignored in determining the profits made by that merchant in the year when the expenses were incurred, simply because he did not move into the premises until the following year I will say that if he had no re-claim against the Government, I would say that the expenses might be taken up in the year in which they were incurred. In my opinion the question whether they should be treated as expenses or not in the year in which they were incurred, depends upon whether he is going to get some money back from the Government afterwards.

2748 As to whether I now think that before I could give any logical conclusion as to how the moneys paid out by the Wrigley Company for Brooklyn moving expense should be treated, I ought to know what disposition was made of that claim against the government, I will say, 2749 as I recollect the expenditures were made in the fall of 1918, beginning probably in July. That was about the end of the—the infringing period ended in the fall of 1918, and I would have to know just what dates the expenditures were incurred. Assuming that these expenditures were incurred during the accounting period I think before I could give any logical conclusion as to how those disbursements should be treated in this accounting, I (2955) should know what became of the Wrigley Company's claim against the United States Government, coupled with the period during which the expenditures were made.

As to whether my opinion now is that if a loss was actually incurred by the Wrigley Company in connection with the commandeering order, and if that loss was incurred during the accounting period, it ought to be taken

into consideration in the accounting here, unless the Wrigley Company was reimbursed by the Government for that loss, I will say if the expenditures, the item in question, represented capital expenditures as well as expenses, that portion of it representing capital expenditures would not be regarded as an expense of the accounting period.

As to whether, in my opinion, if the Wrigley Company sustained a loss during the accounting period which was
2750 occasioned by moving its factory under a commandeering order of the Government, and if that loss was incurred during the accounting period, and if the Government had not made the Wrigley Company whole, I will say if the Government has denied the claim and it is an expense of moving, I would say it is an expense of the business during the accounting period here involved.

In Touche Exhibit No. 1 I have a statement or an opinion that $328,750.00 paid to Wm. Wrigley Jr., as president, during the accounting period should be eliminated on the advice of counsel as an improper charge in calculating the Doublemint profits. That paragraph reads, in my first original draft in my handwriting, as
2751 follows: "The compensation paid Mr. Wm. Wrigley Jr., as president, during the accounting period aggregating $328,750.00, has been eliminated on advice of your
(2956) counsel as not the proper charge in the calculation of the profits on Doublemint in the infringed wrapper."

The word "your" has reference to L. P. Larson Jr. Company, to whom my first draft of report was addressed. The counsel referred to was Mr. Aldrich. I now know that when I drew that first report I had some advice or instruction from Mr. Aldrich. Whenever we took Mr. Aldrich's advice in anything like that that we eliminated, we have so stated in the report. We received instructions from Mr. Aldrich the day that we commenced
2752 to work. I do not mean advice as to the theory that we should pursue. That reference to Mr. Wrigley's salary is not theory. He wanted that eliminated for his reason. I would not have eliminated it if he had not advised it. All instructions from Mr. Aldrich that I had before I wrote out the first draft of our report are all referred to in the report. As to whether I want the master to infer what the opinion of Touche, Niven & Company is with respect to such matters as the filed re-

port shows was based upon the advice of counsel, I will say we did not attempt to express an opinion. They eliminated for legal reasons. Supposing the L. P. Larson Jr. Company is not entitled to interest on profits from the close of the infringing period. In my opinion
2753 the interest received by the Wm. Wrigley Jr. Company during the accounting period should be apportioned on the basis of relative sales. In preparing this report and in expressing the opinions contained therein I was influenced by my interpretation of the decree referring the case to the master. As to whether I interpreted that decree and based my report upon the interpretation that the master was instructed to deduct all items on a basis
(2957) of relative sale, I will say that basis of relative sales is not followed throughout. It is my understanding that the decree instructs the master to allow deductions upon the basis or the ratio of Doublemint sales to all other sales. My conclusions with respect to apportionment, as reported in Exhibit 132, are based upon that understanding. I did not use that basis when that question of apportionment arose, and wherever I expressed an opinion in report 131, as I started to say a few minutes ago, there is one item of the U. P. S. coupons that is allocated by us in there, in the report, and also I think by the Wrigley Company, on the basis of the coupons issued with Doublemint as compared with the coupons issued in other brands of gum. Excluding the item of U. P. S. Coupons, all other apportionments made by me, and all other opinions were on the assumption that the master has been directed by the decree of reference, and upon the assumption that I was bound to use as a basis of
2755 apportionment the ratio of Doublemint sales to all other sales. There are two items though that come under the apportionment that I just spoke of, and that is the amount paid for the U. P. S. coupons and the liability in respect of outstanding coupons, but outside of those two items, that is to say, outside of the U. P. S. matter, all other apportionments had to be made, as I understood the decree, according to the ratio of Doublemint sales to all other sales. All my conclusions with regard to apportionment in the report filed with the master, Exhibit 132, are grounded upon that assumption and upon that
2756 interpretation of the decree. Our theory in respect of interest received is based on the assumption that Double-

mint was sold at the same price and manufactured at
(2958) the same cost and subject to the same discounts, and therefore the profits on Doublemint would be the same percentage of sales as on other brands, and therefore the funds realized from the sales during this period would appear to be distributed on that basis. As to whether the basis of apportioning interest on money earned by the Wrigley Company is at all dependent on the question as to whether or not the Larson Company is entitled to interest on profits from the close of the infringing period only, I will say I think if Larson & Company were allowed by the court, interest on profits from the time the profits were earned, that in that case he would not be entitled to interest on bank balances or other miscellaneous interest credits. The question of whether or not the Larson Company shall have interest on the Wrigley Company's profits from the close of the infringing period only is connected with the question as to how to apportion the interest earned by the Wm. Wrigley Company on moneys that it loaned to others.
2757 As to how I think the interest earned by the Wm. Wrigley Company during the accounting period should be apportioned, if the Larson Company is entitled to interest on profits only from the close of the infringing period, I will say the Larson Company, in my opinion, should have their proportion based on the proportion of Doublemint sales to all sales. If the Larson Company is not entitled to interest on profits at all, then I think the interest received by the Wrigley Company on moneys loaned should be apportioned on the sales basis. On the other hand, supposing the Larson Company is entitled to interest only from the time that the master fixes the
2758 amount which the Wrigley Company should pay, I think
(2959) there should be an apportionment of the interest earned by the Wrigley Company on money loaned, on the sales basis.

I did not testify that the proper method, or that the sales method of allocating interest earned by Wrigley on money loaned, was not in any way dependent upon the question as to whether Larson got any interest at all on the Wrigley profits. I do not think I had any list before I commenced to write out my first report, furnished me by Mr. Aldrich, of items which he said should be dis-
2760 allowed. Mr. Aldrich mentioned the salary of Mr.

Wrigley and the compensation paid to a man by the name of Smith. As far as a list is concerned, I do not think I had one. I do not think any list was ever furnished to me or to my institution by Mr. Aldrich. Before I prepared my first draft of the report I was advised by Mr. Aldrich that he was objecting to the allowance of certain
2761 items in the Wrigley account. I got that information from Mr. Aldrich verbally. I did not make any memorandum of those instructions. I relied on my memory. I do not remember how long before I started to write the first report that I received those instructions from Mr. Aldrich. It was probably in the fall of 1920. At the time we were working on the books. I did not think it was necessary to make a memorandum of his instructions. It consisted of Smith and Attorney's fees and the Wrig-
2762 ley item. It was easy to remember. Those were the only ones I remember.

I think the salary of J. R. Offield was included in Mr. Aldrich's list. As to how I knew from the books of the Wm. Wrigley Jr. Company who Albert H. Smith was and who J. R. Offield was, I will say Mr. Aldrich told me about Smith. I will say that I did not have information in advance as to the parties to whom payments were made
(2960) that were to be objected to. That is, we did of Smith. The balance were included and simply designated as attorney's fees. If the books did not indicate what were attorney's fees and what were not, I would ask. As to
2763 how I would be able to suspect what one to inquire about, for instance,—if I saw the name Parkinson I knew of such a firm. If I saw a name I did not know about, I would inquire. As to what there would be about a name that would make me inquire, I would say it would be amount that would recur from month to month. If it did not recur, I would inquire if it looked like a payment of salary. If I did not think it was a payment to an attorney, I probably would not mention it.

Turning to Exhibit 132, a list of the items in question, which I was told by Mr. Aldrich were objected to, appear on page 3 of B-1. The third item from the bottom is a
2764 proportion of the fee paid Parkinson and Lane, attorneys in Larson and Wrigley suit. $1,613.18. I got that item from the books and records of the Wm. Wrigley Jr. Company. There was no concealment about it on their records. The item appeared in the book, and there was

no concealment that I know of. I do not know whether the books showed that Parkinson and Lane were lawyers. The books did not show that Parkinson and Lane were receiving payments from the Wm. Wrigley Jr. Company
2765 periodically.

(2961) Friday, November 18, 1921. 10:30 A. M.

2766 W. W. VINCENT resumed the stand for further cross-examination by Mr. Mayer:

I said I read over the Marwick, Mitchell, Peat & Company report before I started to write my first report. Any figures that I took from the Marwick, Mitchell, Peat & Company report, with the exception of the U. P. S. coupons issued with Doublemint, were tested as to the correctness by us. I did not test all the Marwick, Mitchell, Peat & Company's figures, I only tested those
2767 I wanted to use. In so far as I made a test I do not remember that we found any mistakes. My object in making the test was to use as much of their work as we could, and to save both time and expense. My object in testing the Marwick, Mitchell, Peat & Company report was to ascertain the correctness of any figures we wished to use
2768 in our report. We started out with the desire to save as much time and expense as we fairly could. I concluded that we wanted to use as many of the figures of the Marwick, Mitchell, Peat & Company report as we thought correct after checking the figures. As to whether
2769 I satisfied myself that there were no mistakes in it, I will say I did not attempt to satisfy myself that the complete report was correct. I will say that I did not satisfy myself that there were no mistakes in the report. I used some part of the Marwick, Mitchell, Peat & Company fig-
2771 ures. I satisfied myself as to all those I used that there was no error in them. I tested the accounts which I proposed to use or could use in our report.

(2962) I do not know how much time I saved by using such of the figures of the Marwick, Mitchell, Peat & Company
2772 report as I actually did use. I have said that we used Marwick, Mitchell's computations on the number of coupons issued and redeemed. Whether it took Marwick, Mitchell, Peat & Company a week, two weeks or several

months to compile those figures, I have no means of knowing, and as I didn't attempt to do it myself, I cannot give an estimate of how long it would have taken me. As to whether I used any of the computations I found in the Marwick, Mitchell, Peat & Company report excepting those with respect to the U. P. S. coupons, I will say I think I used their report for the purpose of explanations, as much as anything else of the items appearing in the books. I may have used some of the figures in computations contained in the Marwick, Mitchell, Peat & Company report respecting items other than the U. P. S. coupons. I can refer to my papers to refresh my recol-
2773 lection on that.

2773 (The witness was then examined by the master.)

I had the Marwick, Mitchell, Peat & Company report before me. I took the Wrigley Company report and then made such changes and corrections as I thought should be made. I would not say that I had occasion to use prac-
2774 tically all of the figures and calculations that were made by the Marwick, Mitchell, Peat & Company provisional report. In the first place we had nothing to do with the sales nor the cost of the sales. That had been agreed upon. I think Marwick, Mitchell, Peat & Company made calculations on that. I don't remember that I found any
(2963) inaccuracies in the Marwick, Mitchell report. As to
2775 whether I used all of the figures that were made in the Marwick, Mitchell, Peat & Company report or the result of all the figures other than regarding the sales and manufacturing cost, I will state I would use the Marwick, Mitchell, Peat & Company report in this way: Mr. Morrison, I would take the records, I compiled my figures from the records, and when I was using the records for any particular account I would turn up Marwick, Mitchell, Peat & Company's report dealing with that particular account and see what they had to say about it, and in that way I used it to that extent. When I had done that, I went to the books to see that their figures were correct. I went to the ledger and would take my figures from the ledger and not from Marwick, Mitchell,
2776 Peat & Company's report. I would take my totals. I did not copy the records. I simply tested it sufficiently to satisfy myself that the figures were all right. This Marwick, Mitchell, Peat & Company report was of some

help to me, and it saved me a considerable portion of my work.

2777 I spent approximately 95 days on this work. I will bring here, the next day, the memorandum showing exactly the names of the persons of our office who worked on this matter and the dates on which they worked.

2778 I found no errors in the Marwick, Mitchell, Peat & Company report. We were engaged on the original investigation reaching original conclusions. We used the Marwick, Mitchell, Peat report to see whether or not, with certain exceptions, their work coincided on that subject with the Marwick-Mitchell report, whether the Marwick-Mitchell, Peat & Company report verified our exam-
(2964) ination, and on other subjects where Marwick, Mitchell, Peat & Company, as to the U. P. S. Coupons, had made a very careful and extended investigation. We
2779 spent a large amount of time on the U. P. S. coupon matter, and that subject we tested by our investigations. Where Marwick, Mitchell, Peat & Company had made a calculation and reached results and stated them in their report, I would go to the original sources only to test the figures to satisfy myself that the figures I reported corresponded with the records of the Wrigley Company. I did not check every item completely. That was true with respect to matters aside from the U. P. S. coupons. My
2780 original sources for the information was the Wrigley Company's books and records. In making my computations from the books and records I would have before me the Marwick-Mitchell report, and for explanations of items I would compare my information and figures with theirs. I did not take the items haphazard. The general count in the Wrigley report of overhead consists probably of 50 or more items in the books. Well, I would go to each one of these accounts in the books. I would make
2781 my own figures from the books, and in doing that I had before me the Marwick, Mitchell, Peat & Company report, and it aided me in that way. Marwick, Mitchell, Peat & Company made no figures, as I recollect it, on advertising at all. That is true of a good many things in this report. Our figures in the advertising respect are original with us. With respect to other items as to which Marwick, Mitchell, Peat & Company did give figures and did give a report, I do not know that I can explain it in

any better way than I have, that I went first to the books, and had before me their report, and if their report coincided with what I found out myself, why all right. (2965) Their report was a help to us in shortening the work and saving time, and in the coupon computation. It was a help to us outside the coupon question. I cannot tell how much it was. I would not say it would have taken us twice as long to make out the report we did make if we had not had the Marwick, Mitchell, Peat & Company report. I have no opinion on that subject that I would feel safe in giving. I will say that it was a considerable advantage to us to have it.

Cross-Examination (Resumed) by Mr. Mayer.

There is no account on the Wrigley books under the heading overhead. I examined accounts which were grouped in the Wrigley account under the caption overhead. I did not examine every posting with respect to every item in the Wrigley Company's books which the Wrigley Company grouped under the heading overhead in the accounts which they filed before the master. As to whether I accepted some figures as correct in that account or under that heading, I will say I tested the account sufficiently to satisfy myself it was all right. As to whether by sufficiently I mean that I took an item here and there and followed it for the purpose of seeing whether they were correct as reported in the account filed with the master, I will say I might confine myself in any particular account to the larger items in the account. I would check each account, like depreciation, expenses or advertising, discounts allowances—probably forty or fifty accounts, I cannot mentioned them all. I examined very critically the accounts filed by the Wrigley Company before the master. I know, generally speaking, that the Wrigley filed account showed certain receipts from the (2966) sale of Doublemint gum and certain charges against it. One of the charges so charged is overhead. The Wrigley Company deducted from their receipts from the sale of Doublemint gum on account of the item called overhead in their filed account an amount for each period of the accounting period. I do not remember what the aggregate is. I have before me a copy of the Wrigley

Company's reports filed before the master. That shows a deduction for an item called overhead during the period July 28, 1914, to December 31, 1914, of $73,951.79. I went to sources for the purpose of determining what items made up that $73,951.79. As to whether I went through the books and accounts of the Wrigley Company for the purpose of picking out each single item that made up that total, I will say it seems to me that we obtained from some of the officials the statement making up the total of $456,697.59. That is the total of overhead for the period of time, a portion of which, amounting to $73,951.79, was deducted on the Wrigley filed account. Referring to that total of $456,697.59, we examined each account on the
2787 Wrigley books and records to see whether they actually justified the statement on the filed report that the overhead or items called overhead during the period stated amounted to $456,697.59. I did not look up each item. As to the distinction between account and item as used by me, I will say the account may be made up of 100 items, postings. Salaries would be an account. An item would be the postings from month to month to that account. There is an account kept on some of the Wrigley books entitled salaries. That heading would be found, I think, on the general ledger. Under that account on the
2788 ledger I would find various entries. Usually there would be may be one or more entry each month. I do not re-
(2967) member whether they posted any total or had more than one in there a month. There would be an amount posted under the account called salaries in the Wrigley general ledger. Just what the total was, I do not remember. It has been about a year since I saw those books. Those postings came into the ledger from probably the cash book or voucher book. If they paid a salary to a stenographer that would probably appear in the
2789 Wrigley records on the pay roll record. I do not know whether they kept a pay roll for the officials or not. I cannot say they did for stenographers, presumably they did.

I was at the Wrigley office for a number of days, covering weeks. I have no idea how many employes were there in that office. There were probably nearer 100 than 9. I did not examine the Wrigley books in their general office. They assigned us to a small room on the floor

above the general office. I have been in their general office. I did this work in the Kesner Building. As to
2790 whether they had several floors there, I will say I do not know whether they occupied all of the floor, but some of the officials were on two of the floors. I have been in the office where I saw the office force at work. I should think there were perhaps 100 people there. As to what they were doing, speaking generally, I will say I did not go behind the counter. They were apparently doing bookkeeping work, not factory work. As to whether I knew it to be a fact from my own observation, I will say I was not concerned in what they were doing. I do not know whether or not there was a stock of merchandise there that was being handled by those employes. It is not probable that that floor and that office in which I saw
2791 about 100 people at work might have been engaged in (2968) handling merchandise. That is not what I want the master to understand by my testimony. I take it that they were working on the books and records. I have no doubt about it. I am not willing to state positively that I know that that office force was doing clerical work and not handling merchandise. I say, to the best of my knowledge and belief, that is what they were doing. Usually we went to the place where I saw this large number of employes to get the books in the morning, and probably return them at noon, and get them again after lunch and return them at night. Personally I would not say that
2792 I was in that room at least four times a day. I think I was there ten, twenty or thirty times during all my visits to that building. The place where I saw this large number of employes working was an open space, with the exception of the cashier's cage. There were both men and women there. I think they were all working at desks. I think many of them were working on typewriters. I did not see any stock of merchandise in that office. I did not
2793 examine the payroll which would show the salary paid to a stenographer. I think the posting would probably be made from the payroll, either to a journal or to a cash book. I tested the posting in the journal or cash book with respect to these salaries. I did not examine all of them. By testing I mean I would refer from the general ledger to the subsidiary records, for enough of these items to satisfy myself that they were what they pur-

ported to be in the ledger. Take an illustration. I would find on the ledger a charge under the account of salaries of say $18,000.00. I would not check back to the source
2794 from which the entries were made into the ledger as to every charge I found under the salary account. But
(2969) here and there I would take out one of those charges on the salary account in the ledger, and then go to the book from which it was posted. That book would either be a cash book or a journal, as I recollect it. In the supposed $18,000.00 item that appeared under salaries in the ledger, if it happened to be posted from the journal, I would go to the journal and would find the $18,000.00 entry on the journal. That $18,000.00 item would be the aggregate of a large number of items. I did not examine each one of the items that made up the $18,000.00. If I made an examination to ascertain the correctness of the
2795 totals that were entered into the ledger of the salaries from the cash books and journals, it would have taken a very much longer time than I actually took in the work. This illustration which I have been giving with respect to salaries is not necessarily applicable in its details to the other items that went into the overhead charge on the Wrigley account. An account of salaries is more or less explanatory of what you would expect to find in that account. An account of general expenses might be all kinds of things.

As to what use I made of the Marwick, Mitchell, Peat & Company report in examining the salary account on the Wrigley books, I will say I find by reference to the Mar-
2796 wick, Mitchell, Peat & Company report that instead of salaries, the account is called administration, and Marwick, Mitchell, Peat & Company's report apparently only shows the totals for the respective periods, so in that case all I would do would be to compare the total, after I finished my analysis, with their figure, which of course, would agree with the books. By analysis I do not mean
(2970) after I had made these tests. On this subject of salaries, what I do mean is that in that account I analyzed
2797 the salaries of the officers. That is, I found out how much of that salary was paid to Mr. Wrigley, and how much to Mr. Cox, and Mr. Eckerly. That was not because I was asked to get special information as to the salaries paid the administrative officers. I would do that

anyway. I did not make any attempt to analyze the salaries paid to the clerks. I did not accept the Marwick, Mitchell, Peat & Company report on that, or their figures as to that being correct. I took the book figures. As to whether I tested that to see whether the entries on the ledger were justified, I will say that if they amounted to any considerable amount I tested them to see that they came from the proper source. The figure which I ultimately used in making up the report that I filed here
2798 were not the figures that I found in the Marwick, Mitchell, Peat & Company report. I would not say that my report contained figures differing from those in the Marwick, Mitchell, Peat & Company report on that same subject. As a matter of fact, I said before that I found no difference that I remember, but I did not base my report on Marwick, Mitchell, Peat & Company's report. I based it on the record of the Wm. Wrigley Jr. Company. As to what use I made of the Wrigley Company's account in my report, I would say I would necessarily have to use this report to find out what proportion of the overhead, the advertising and the other items the Wrigley Company had charged against the Doublemint account were supported in any detail back here—of course I would refer to the details, and then I would proceed to verify it, by reference to the books. As I said before, I would
(2971) have this report with me and refer to that from time
2799 to time, as a sort of a verification of my calculation.
2800 The total of overhead from July 28, 1914, to December 31, 1914, is stated in the Wrigley account to be $456,697.59. The Wrigley Company deducted in their filed account for overhead during that period, $73,951.79. The report states that they used 16.1927 per cent of $456,697.59 to get the $73,951.79. Part of my work was to find out whether that $456,697.59 was correct. I satisfied myself one way or the other that it was correct. I satisfied myself on that subject from the record. I used the Marwick, Mitchell, Peat & Company report to confirm what I found out myself, and tested it out myself.
2801 In the report which I have prepared and filed, I used a certain percentage of the aggregate overhead charges during that period. The per cent I used of the overhead during the period July 28, 1914, to December 31, 1914, is stated in our report. As a matter of fact, the total of the

2802 figures and the percentage charged to Doublemint is shown for each item. I think that is the identical figure with this. I used the same per cent of overhead during the period July 28, 1914 to December 31, 1914, that the Wrigley Company did, namely, 16.1927. Those percentages are the same percentages that Marwick, Mitchell,
2803 Peak & Company used. I think we tested the percentage out to find out whether it was correct. The percentages that I found and that the Wrigleys used, and the Marwick, Mitchell, Peat & Company used, were all identical.

I do not want to intimate to the master by anything I have said, that I made an independent examination for the
(2972) purpose of ascertaining what the percentages were.
2804 I am satisfied though, that I made no complete examination of all items necessary for me to ascertain independently what the proper percentages were. To amplify that, that percentage purports to be the percentage of Doublemint sales to all sales, and the Doublemint sales had been agreed upon, so the only calculation necessary to verify that percentage would simply be to divide the total sales into these figures which they call the Doublemint sales, so it was not a very extended investigation.

2805 Discount is another item that went into the item called overhead. I labeled that an account, as distinguished from the word item. There was an account in the general ledger of the Wrigley Company headed discounts. There would be postings there at least once a month, of totals taken from books of original entry. That might come from the cash book or from the journal, or I think they had some other subsidiary record. I did not run down to verify the correctness of each one of those items under the discount account. I used the Marwick, Mitchell, Peat & Company report as to that item only for the purpose of
2806 reference. I find the item discount under the overhead caption at page 62 of the Marwick, Mitchell, Peat & Company report. My totals, as shown on Exhibit B under the column per the Wrigley Company statement, agree with the figures on page 62 of Marwick, Mitchell, Peat & Company's report, with the exception that for the period from
2807 August 25, 1918, to October 4, 1918, Marwick, Mitchell, Peat & Company's report shows the total of $152,979.26, where as the figures on my statement are $164,218.18, and for the next period Marwick, Mitchell, Peat & Company's total is $286,272.87, whereas the figures on Exhibit B

of our report in the column per Wrigley Company
(2973) statement, shows $275,033.96. My totals in the first in-
stance exceed Marwick, Mitchell, Peat & Company's totals
by $11,238.92, and in the last period mine are less by the
2807 same amount except one cent. So it must be certainly a
switch between periods. I do not mean that if I had used
the same periods as Marwick, Mitchell, Peat & Company
did I would have found the same results. I think we used
the identical periods, and he had his dates wrong. He
has on page 62 of his report next to the last column the
period as August 25, 1918, to October 4, 1918. The total
in that column is $152,979.26. My Exhibit B has no period
of time shown on it exactly like that. My column shows
2808 September 1, to October 4, 1918, and it is under that
column that I say Wrigley's statement shows $164,218.18.
Regardless of the period of time, both Marwick, Mitchell,
Peat & Company were purporting to report that which
was in the Wrigley's filed account, in this column. Neither
of us was undertaking to give figures of our own. In
that particular column both of us were merely reviewing
or telling the court what the Wrigley Company was claim-
ing for these periods. What I have said applies also to
the last column on which the Marwick, Mitchell, Peat &
Company report shows $286,272.87, and in which my
report makes it $275,033.96.

The method I adopted in testing out the accuracy of these so-called accounts on the Wrigley ledger, such as discount and salaries, was the same method pursued with respect to all other items.

I am a certified public accountant, but not in Illinois.
2809 I never took any examination in Illinois for the purpose
of becoming a certified public accountant. I did, however,
take an examination for the purpose of obtaining member-
(2974) ship in the American Institute of Accountants. It
was not necessary to take an Illinois examination when I
2810 had another certificate. I have never studied law. I read
commercial law, but not to a very large extent. You are
required to know something about commercial law in con-
nection with these examinations for certified public ac-
countant's degree in every state. I got a certified public
accountant's certificate in South Carolina. I think it was
dated five years ago, in 1916. I had to take an exami-
nation in some legal questions in order to get that cer-

tificate. The legal questions which I had to pass an examination on were questions relating to commercial law. I do not remember what the questions were. I do not know what book I studied on that subject. I think the
2811 author was a lawyer in Cleveland.

I did not personally examine any of the contracts between the Stewart-Davis Advertising Agency and the various newspapers and magazines for the insertion of advertisements for the Wm. Wrigley Jr. Company. While making that examination I had no discussion with Mr. Wm. Wrigley Jr. at any time. I talked with James A. Gill once or twice. I talked with Mr. Stanley.

I consider the question as to whether interest should or should not be allowed the Larson Company on the Wrigley profits made from the sale of Doublemint gum in the infringing dress a question of law, and not of accountancy

As to whether or not the Wrigley Company should be charged with something for good will supposed to be vested in them at the end of the infringing period to be a question of accountancy, or a question of law, I think that would have more to do with law than it would have to do with accounting.

(2975) I consider the question whether or not this Double-
2812 mint account should be charged for payments made to Frank F. Pulver a question of accountancy, and not a question of law. My views as an accountant on that subject are that the payments to Pulver should be eliminated from the Doublemint account because the obligation to make those payments was created before the accounting period.

(2976) Friday, November 18, 1921. 2 o'clock P. M.

2813 W. W. VINCENT, resumed the stand for further cross examination by Mr. Mayer:

The Witness: I made no examination with respect to money paid out by the William Wrigley Jr. Company for advertising during any time prior to July 28, 1914. I made no investigation with regard to the sales made by the Wm. Wrigley Jr. Company at any time prior to July 28, 1914. I understood that July 28, 1914 was the beginning of the accounting period. As far as I know none

of the Touche, Niven & Company employes made any investigation as to money paid out for advertising or as to
2814 sales by the Wm. Wrigley Jr. Company prior to July 28, 1914. Touche, Niven & Company had no occasion to go back of July 28, 1914.

I do not consider good will to be a profit. As to my definition of profits, I would say gross profits would represent the proceeds from sales less allowances and discounts. Net profit would represent the gross profits less the manufacturing costs and expenses of administration and operation and cost of sales.

If I was told to ascertain the profits which a merchant makes in a certain business I would find out first his sales. Then, if he was a manufacturer, what it cost him to manu-
2815 facture his wares. I would then deduct from the cost of manufacture the value of the goods unsold at the period for which I was trying to ascertain the profits. The problem for me to find out would be, as an accountant, to find out what the profits are of a manufacturer during a given period. I would first ascertain what the manufacturer's sales during that period were. Then I would ascertain what it cost him to manufacture the goods sold during that period.

(2977) Then I would deduct the cost of the sales. In ascer-
2816 taining the cost of sales you take inventory of merchan-
2817 dise or whatever you have to sell at the beginning of the period; to that you add the cost of what was manufactured during the period, and from the sum of those figures you deduct the unsold goods on hand at the end of the period, and the resulting figure is the cost of what was sold. I take that from the gross sales.

The word "overhead" as used in good modern accounting is one which might convey a different meaning to dif-
2818 ferent expert competent accountants. Overhead is generally spoken of as or used in connection with manufacturing expenses, that is to say, the labor, the indirect labor and material expended in the factory. I see no objection to designating by using the word "overhead" as having reference to office overhead in a business which had both an office and a factory. Overhead is used more particularly with reference to overhead factory costs. As to whether I mean to say to the Master that in my opinion the expression "overhead" is used more particularly with respect to factory overhead than it is with respect to

office overhead, I mean I don't believe I ever saw the office expenses which are usually designated as administration and general expenses called overhead.

If I was called in as an expert accountant to make a report in a case as to the profits made by a manufacturer during a given year, if the manufacturer was accustomed
2819 to calling his general and administration expenses overhead, I don't believe, in making my report, I would change it. I would not regard it as an evidence of incompetent or of not being up to date if I found the word "overhead" or that heading or some account under that name in such a report. It is a matter of taste. Overhead, to my mind, is not fully descriptive of the accounts grouped under
(2978) that heading. I don't disapprove of it, but it is not the kind of a word I would use in that report which I have just assumed I was requested to make.

As a matter of fact, on page 2 of this report that I have filed here, being Exhibit 132, I have used the fol-
2820 lowing language, after pointing out on the first page of my report that I find a difference of $3,113,156.27:

"The above difference of $3,113,156.27 is composed of such items as follows,"

and then comes a detailed statement in which the first item appears as follows:

"Doublemint's proportion of overhead Expenses."

The only reason I used overhead and not some other expression was because that designation was used in the Wrigley accounting, and I would not confuse it by calling it some other name.

2821 I did not make any investigation as to the nature of the services of the one hundred or more employes that I found in the Wrigley office. I assumed they were all engaged in the general and administrative expenses. I didn't investigate to find out whether the salaries of all those clerks in the Wrigley office were included in the
2822 overhead. I went by what the books showed. The books didn't show the nature of their services.

If I was attempting to find out the profits of a manufacturer during a given year, before I would know how to allocate the expenses of the office force and the janitor and the messengers and the cashiers and the stenographers and the bookkeepers, I would have to know just what type of services they were performing. If I assumed that the services of this office force of this manu-

facturer were all devoted to administrative matters,
(2979) I would, for the purpose of ascertaining the net profits, deduct the expense of the salaries of that force from the proceeds of the sales.

In the supposititious case under discussion, where I am asked to find out what the profits a merchant in a manufacturing business were in a certain year, I would deduct in the case supposed the salaries paid all of the office force
2823 if they were engaged in that, if their services had nothing to do with the manufacturing. In ascertaining the profits of this merchant in that manufacturing business I would deduct from the sales the cost of manufacturing the goods sold during the period of the year under discussion. I would also deduct all expenses of administration and costs of operation.

2824 If I was asked whether I would also deduct overhead, I would say, I would take it to mean that the overhead would consist of these items that the Wrigley Company has included under the caption of overhead. If I were asked to find out what the overhead is in a particular business I would be asked a question which, in my opinion, might receive different interpretations from different competent accountants. One competent accountant might understand it one way and one might understand it another. If you would call it administration and general expenses instead of overhead, I think all competent accountants would understand what you were talking about.

2825 If I were asked to ascertain the proper expenses of a manufacturer in order to ascertain the profits of that manufacturer in that business during a specified time, I would take it to mean all the expenses, manufacturing expenses, overhead expenses, and administration expenses, and all the other expenses of the business. I don't see how competent accountants could construe the
(2980) words "proper expenses" in any other way than all the expenses.

If, before the accounting period the manufacturer had contracted to buy one hundred tons of steel at ten dollars a ton, the general books of that manufacturer at the time the order was given, if kept according to my notions of proper accountancy, would necessarily show a liability at
2826 that time. As to whether good accountancy requires making entries in books of orders given by a manufacturer for the purchase of material, I will say they keep

records of the orders, but they don't make book records of them. That's good accountancy.

If I want to find out what the liabilities of that manufacturer are I would not find any charge as a liability upon his books at the time the order was given. If the hundred tons of steel is delivered to that manufacturer within the accounting period and then paid for, I would expect entries to appear on the accounts at the time the steel was received and paid for, if not prior to the time it was paid for. An entry would be necessary at the time of receipt. If the steel was purchased to be delivered in ten annual installments and was to be paid for annually contem-
2827 poraneously with the delivery, in my opinion, the liability should be included either in the accounts or as a bottom note on any balance sheet that would be issued by the company, if the company was obligated under a binding contract to take this quantity of steel. I would be satisfied as an accountant to have it on the footnote.

Generally, every large manufacturer always has outstanding orders for merchandise to be delivered at a future date.

2828 It is a common thing for a manufacturer to employ stenographers by the month. They pay them by the week. As to whether it is my understanding that good accountancy requires the accountant to show on the books as a
(2981) liability of the manufacturer the obligation which he has undertaken with respect to merchandise that he has bought for future delivery and for employes whom he has hired to be paid in the future, either monthly or weekly, I will say, so long as he takes up the liability for the time that the employes have worked, that is all that is necessary. As to whether good accountancy requires the entry on the books of the manufacturer of the items showing liabilities when he orders merchandise for future delivery in due course of business and when he employs help to be
2829 paid in weekly or monthly installments, I will say, as to the salaries, no; as to the merchandise, if it is a considerable amount, the contingent liability or the obligation to purchase the merchandise should be shown at least as a footnote on any balance sheet that is issued. That is the practice I would recommend. I cannot say whether it is the custom or not. I am not sure from personal knowledge of any large concern that keeps its books in that way,
2830 but I think the Jewel Tea Company does. I have per-

sonlly looked into that question with respect to the Jewel Tea Company. I don't say the books of the Jewel Tea Company show as liabilities all items consisting of contracts for the purchase by the Jewel Tea Company of merchandise or materials or things that they use in their business. I said the balance sheet showed a footnote. I think the balance sheets of the Jewel Tea Company are printed. I cannot produce one at the next hearing. I have no way of getting one.

The stock of the Jewel Tea Company is listed on the New York Stock Exchange. Goldman, Sachs & Company are the financial backers of that concern. I am not aware of the fact that I made a report to those backers, the integrity of which report has been questioned. This is the
2831 first intimation I have had on that subject.
(2982) I didn't testify definitely regarding the Jewel Tea Company's balance sheet. I gave it as my opinion that it had a foot note such as I have described. I don't know that it is a fact that the notation is shown on the printed balance sheet. It is a fact that the contingent liability is referred to in the reports that we make. As to whether, when I said I thought the Jewel Tea Company's accounts
2832 showed their liabilities for unfilled contracts, I meant that I made a report to the Jewel Tea Company on that subject or that the books of the Jewel Tea Company were so kept as to show those undelivered contracts as liabilities, I will say no. The undelivered contracts, as I have said before, would not be taken up on the general ledger. The method of arriving at that contingent liability is to investigate the contracts and ascertain the amount in that way.

I would only be called on to do that where I was trying to find out the true condition of the company. A mere investigation as to the profits made by that company during a six months period or a year's period would not make it necessary for me to investigate those contracts if the material was not delivered. If the material was delivered, then the company would have those assets on hand if they had not used them up. If they had used them up, they would have the product of it on hand, if
2833 they had not sold it. If they had sold it, they should have on hand the proceeds of the sale, either in bills receivable or in cash. So in any event the minute the mer-

chandise comes the assets of that concern are increased to the extent of the merchandise.

If a manufacturer was engaged in the business of manufacturing machinery and guaranteed that machinery for a year in my opinion, that guarantee would impose upon the manufacturer a liability. In such case
(2983) the manufacturer should show as a liability upon his books the estimated amount which he will be called upon to pay to make that guarantee good. I don't recall the name of a single manufacturing concern which keeps its books in that way. As a matter of fact, the opinion which
2834 I have expressed here that there ought to be an account kept on the books showing these guarantees as liabilities is merely what I consider good accountancy. Some people, I think, carry out practically my theory on the subject. I don't know that it is the practice. I don't know of any single concern that carries on its books as a liability the obligations that it is under because it issues guarantees with its machinery.

I have examined books or have had charge of accounts of an automobile manufacturing concern. I think these automobile manufacturers guarantee their automobiles both as to workmanship and material for a given period, say three months or more. I cannot name a single automobile manufacturer which is under that kind of a guarantee which carries on its books any liability because
2835 of such guarantee. It has been five or six years since I audited the books of an autombile manufacturer, and I don't remember.

I have never examined or audited the books of any piano manufacturer. I can't answer offhand if I have examined the books of any manufacturer of goods which are guaranteed.

If I carry as a liability on the books of a concern the purchase of merchandise not yet delivered, I would not take it up in the general books until the material was received or shipped. When the material was received or shipped, I would treat the goods as an asset and the payment as a liability. In plain English, I don't treat it as
2836 an actual liability until the goods come in or are shipped.

(2984) If this manufacturer whose profits I was asked to ascertain for a given period sold goods with a guarantee that extended beyond the period for which I was inquir-

ing as to profits, in order to find his profits, I would find out what his experience had been with respect to liabilities on these guarantees, and I would estimate the liability on that basis. I would discuss the estimated liability with the officials of the company and obtain from them their views. A conclusion reached in that way would be the best one obtainable, and I would consider that as reasonably accurate, if their experience extended over a
2837 sufficiently long time. It would then be my recommendation that that amount so ascertained be put on the books as a liability. If they objected to that, I would certainly call attention to it in the report that I would furnish.

If I were seeking to ascertain the profits of this manufacturer during a given year I would deduct from what he receives on his sales during that year all proper expenses incurred in connection with that business during that year. I would not deduct the liabilities from the gross profits.

If the manufacturer in question had given his note for a thousand dollars payable five years after date, I would not necessarily deduct that thousand dollars in order to ascertain what the profits were. I would have to find out what the note was issued for. If the note was issued
2838 for merchandise that was received during the year in question, I would set the liability up any charge the merchandise account with the merchandise used, and it would necessarily be a part of the cost of sales.

If the merchandise in question was used up, it would be a deduction from the cost of the goods sold. If the
(2985) merchandise was not used up during that particular year, then the thousand dollars should not be deducted.
2839 The effect would be to exclude from the account for that year this merchandise as though it had never been received during that year.

If I found a note given six months before the year for which I was to ascertain the profits and that note became due during the year for which I was to ascertain the profits, I would say the note had nothing to do with the profits. If the note was given for goods and the goods were used up, it would constitute a part of the cost, but if the goods were not used it would be carried in the inventory as an asset. The test, when you are talking about notes given for merchandise, as to whether a de-

duction should be made or not, is not the date of the note or the time of maturity, but depends upon other facts. The note would not have anything to do with the ascer-
2840 tainment of profits. You would deal with the merchandise.

If you were talking about contingent liabilities such as those resulting from guarantees on machinery, then taking the question of guarantees that were made during the accounting period which outlived the accounting year, and taking also the question of contingent liabilities made before the accounting year but becoming due in the accounting year, the test as to what should be deducted would be the proper amount that the company would have to pay to make good those guarantees. In the case mentioned the real test is not dependent entirely upon the date when the liability was created.

In the case of liabilities created because of guarantees of machinery, you could tell from the contracts how long it would take before you could find out whether you were no longer liable. If the contract says you shall be liable
(2986) for one year, then when the year is up you know the
2841 liability ceases; if it says three months, the liability would be up in three months. If the guarantee had no time limit at all, supposing they were obligations that were perpetual, I would ascertain the estimated liability in the same way by the experience of the company in the past. As to whether I am not of the opinion that where the problem is to ascertain the profits made during a certain period you ought to deduct from the sales during that period all liabilities created during that period, and all manufacturing costs of the merchandise sold during that period and all expenses of administration and of operation during that period—I will say, no, I don't deduct the liabilities. It all depends on what the liabilities were incurred for. Liabilities are not expenses. In giving an answer as to what the profits were, I would have to
2842 investigate the liabilities at the end of the period. They would be all I would be concerned with. I would want to see that they were all brought into the books. I would not deduct liabilities from profits. The liabilities have nothing to do with the profits. The test is if the liabilities were given for goods and the goods have been consumed, they represent an expense during the period in which they were consumed.

If I was trying to find out in a partnership disssolution case what the profits were during a year, and I had concluded that they were $100,000, and I discovered what I had not theretofore known, that concern had during the accounting year injured one of its employes on account of which a suit had been begun during the accounting period, I would pay some attention to that suit. In making my report that the profits were $100,000 I would at least call attention to that injury claim. If the agreement of disssolution said nothing except that upon the
(2987) dissolution the profits for that particular year I had been asked to investigate should be paid to A. B., and I
2844 was called in as an auditor or accountant to find out how much money should be paid to A. B., and I found that there were $100,000 profits made during the year which ought to be paid to A. B. excepting to the extent that this personal injury claim ought to be considered, and then suppose I found that that personal injury which occurred during the accounting period had gone to suit and there was a judgment in the year afterwards which was paid amounting to $10,000, I would say that that $10,000 in my opinion should be deducted from the $100,000. Accounting is nothing more than common sense namely, that you have got to deduct from profits all of those items which fall within and reasonably tend to diminish the profits during the accounting period. The test is not when those items were paid, but when the liability therefor was created or when the consideration for the liability was received. The payment would not have much to do with the ascertainment of profits. I
2845 don't think it would in any case. If the liability were taken up, the liquidation of the liability could not affect the profits. By the words "taken up", as I have just used them, I mean entered on the books. In the case mentioned, if you took up the liability or entered on the books a liability for the $10,000 for a personal injury accident, it would not make any difference whether you paid that liability in that year or whether you paid it in some subsequent year. That's because if it was taken up or entered on the books as a $10,000 liability, it necessarily would show that much less profits.

In my opinion, the question of whether interest should or should not be allowed on capital invested in order to ascertain profits is ordinarily a question of accounting.

(2988) There was no investigation made by me or by any of my associates while examining the books and records of the Wm. Wrigley Jr. Company as to the number of
2846 their factory employes during any of the accounting periods, or as to the number of their office employes during any time, or as to the number of traveling salesmen at any time, or as to the number of so-called advertising salesmen or detail men employed by the Wm. Wrigley Jr. Company at any time.

No investigation was made by me or Touche, Niven & Company in connection with this matter as to what machinery was used by the Wm. Wrigley Jr. Company during any of the accounting periods, or as to what or how many factory sites they were using, or as to the size of the factory used by them at any time, or as to the size of the office used by them at any time.

I think I stated in the report I filed here that the Wm. Wrigley Company acquired no additional capital on account of its Doublemint business. I assumed in the con-
2847 clusion contained in the report filed by me that the Wm. Wrigley Jr. Company acquired no additional capital on account of its manufacturing Doublemint during the accounting period. I did not receive any instructions as to how to make the report from anybody. I was not instructed to make my report. As to why I made my report based upon the assumption that the Wrigley Co. acquired no additional capital in connection with its
2848 manufacturing Doublemint gum during the accounting period. I will say that I understood from Mr. Aldrich that that was admitted in the testimony.

No investigation was made by me or by Touche, Niven & Company with respect to what, if any, patents were being used by the Wm. Wrigley Jr. Company in its busi-
(2989) ness during the accounting period, nor was any such investigation made with respect to whether or not the Wm. Wrigley Jr. Company was using any patents during any part of the accounting period in connection with the manufacture of Doublemint gum. In making the report which I filed before the Master I assumed that the Wm. Wrigley Jr. Company's patents were not used in the manufacture of Doublemint gum during the accounting period. As to whether if, as a matter of fact, the Wm. Wrigley Jr. Company was using the patents in the manufacture of Doublemint gum during the accounting

period, and if as a matter of fact the Wm. Wrigley Jr. Company did acquire additional capital during the accounting period on account of its manufacture of Dou-
2849 blemint during that period, I would want to change my conclusions in the report filed with the Master, I will say the question of interest on the capital I take to be a matter of law and not of accounting. I didn't say a few minutes ago that the question of interest on capital is ordinarily a matter of accounting. I would regard it as
2851 a question of law, and I think I would state as I have done and leave it up to the court to decide.
2852 I think the Government allows depreciation on patents in the preparation of income tax reports and excess profits tax reports. The Government allows depreciation amortization. That is, it allowed patents to be written off over the period during which the patent is good—about seventeen years. I think that's what the Wrigley Company did in the account they filed before the Master, but I don't remember just how that was figured. If the Wrigley Company did that, I approve such amortization. I think the patents ought to be written off during the life of the patents, for the purpose of ascertaining profits and also for the purpose of reducing the asset to its value.

As to whether, in my opinion, as an accountant, if
(2990) a company takes out a patent, the life of which is
2853 seventeen years, or buys a patent the year it is issued and pays, say, a million dollars for it, that during the first year it should include one million dollars in its assets on which it reckons interest on the invested capital and that it should also take one-seventeenth of a million dollars off for amortization at the end of the first year, I will say they should take one-seventeenth for amortization for the year. As to whether it should allow interest on that one million dollars as on an invested capital for that year, I will say interest on invested capital is not an outlay or an expense.

If a merchant fixes the price at which he sells goods, he will take into consideration the interest on his investment in the selling price, but it would have nothing to do with the cost.

2855 December 12, 1921. 10:30 A. M.

It was agreed by the Larson Company that the Wrigley Company's request for an adjournment until January 3, 1922, at ten o'clock, A. M., was a reasonable one.

2856 Wednesday, December 14, 1921.

The Master received a stipulation signed by counsel for both sides extending the time for the Wrigley Company to file its statements of account of the business of the Canadian and Australian Companies until January 3, 1922, and the Master ordered accordingly.

2857 January 3, 1922. 10 o'clock, A. M.

By agreement of the parties, the time for the Wrigley Company to file its statements of account of the business of the Canadian and Australian Companies was extended (2991) to February 2, 1922, and the case was set down for hearing on Monday, January 16, 1922, at 10:30 o'clock, A. M.

2858 Monday, January 16, 1922. 10:30 A. M.

The hearing was continued to Monday, February 6, 1922.

February 6, 1922. 10:30 A. M.

On application of counsel for the Wrigley Company, the time for filing the accounts of the business of the Canadian and Australian Companies was extended to April 6, 1922, at 11 o'clock in the forenoon.

2859 W. W. VINCENT, resumed the stand for further examination on direct by Mr. Aldrich:

The Witness: I stated to Mr. Aldrich over the phone that I had certain corrections in my testimony which I desired to make.

(Mr. Aldrich asked the witness to make them before the cross examination was continued. Mr. Mayer objected on the ground that the previous cross examination had not been completed, and it had been expressly stated

it could not be completed until the work sheets which covered a thousand or more pages were produced and counsel for the Wrigley Company had been given an op-
2861 portunity to examine them. The Master stated he would let the witness make the corrections he desired.)

The Witness: The document I have in my hand is a memorandum of changes which I think should be made in my testimony. It was prepared by myself without any consultation with Mr. Aldrich in any way, as a result of reading my testimony as it was transcribed and reported.

(2992) *Cross-Examination by Mr. Mayer.*

I have not discussed these changes with anybody. I showed this memorandum to Mr. Aldrich when I told him I wanted to make some changes.

2863 I did not discuss the changes with Mr. Aldrich. I simply showed him what changes I wanted to make in the testimony. The changes shown on the papers now before me are all the changes I ever expect to make in my testimony. There are no changes that I expect to make in my testimony that are not now on those papers. The papers here before me now contain neither more nor less than all the changes I at any time expect to make in the testimony I gave before Master Morrison. I had one other page that I had written out. I don't know as it is necessary to put that in. I have no objection to handing that other page to which I have just alluded to the stenographer to be marked for identification.

2864 (Mr. Aldrich told the witness he might state whether he ever showed that page to Mr. Aldrich. The witness answered that they were all together; there were four pages in all, and this was among those he showed to Mr. Aldrich. The paper which the witness stated he did not intend to use was a typewritten page headed at the top "Page 2814. My answer was that Gross Profits" etc. Said paper was marked for identification Touche Exhibit 20.)

The remaining corrections are on three other sheets, and those three other sheets are the ones that contain all the corrections I now wish to make.

(The said three sheets were headed "Minor changes in testimony" and were marked for identification Touche
(2993) Exhibit 21, sheets 1, 2 and 3, respectively.)

2865 My plan was to read into the record as my corrections what is on the three sheets constituting Exhibit 21 for identification. All the language on those sheets is my own. I showed those changes to my superior, Mr. Whitworth. I did not discuss with him before they were prepared the question of making any changes. The changes were principally of a typographical nature. I think there is only one matter as to substance that I wish to correct, and that's respecting interest.

(The witness then stated a number of minor corrections which he wished made in his testimony as written up. These corrections have been made in the witness' testimony as herein heretofore reduced in narrative form.)

The next correction is one that I concluded not to change. I am speaking now about Exhibit 20 for identi-
2870 fication. It is page 2 of my notes, marked Exhibit 20
2871 for identification. The corrections appearing on Exhibit 20 for identification, being sheet No. 2 of my notes, are proper corrections, but I do not consider them important.

At page 2814 my answer was "Gross profits would rep-
2872 resent the proceeds from sales, less allowances and discounts." I should have added the item of "cost of sales." Net profits would then represent gross profits, less administration, selling and general expenses, interest paid and other charges.

(This correction has been made in the witness' testimony as herein heretofore reduced in narrative form.)

Pages 2829 and 2830 should also be corrected. That's with reference to the Jewel Tea Company. I said in
(2994) answer to a question that I thought the Jewel Tea Company shows as a foot note on published balance sheet the contingent liability in respect to unfilled contracts for purchase of material. I have since inspected the published balance sheet and find they do not. Without
2873 wishing to discuss in public the accounts of one of our clients, I think I should in justice say that the reason for the omission of this foot note on the balance sheet is that the officials of the company regard the contracts as merely an arrangement for their anticipated requirements of certain commodities during a given period, and that no liability attaches until orders have been placed to ship the goods. That is to say, that the company is not obligated to take any specific quantity, but may order such

goods at an agreed price whenever they need them. If they don't need the goods, shipping orders are not placed and no liability attaches to the company.

(Mr. Mayer then resumed cross-examination of the witness.)

I say I have examined the balance sheet of the Jewel Tea Company and find that the testimony I heretofore
2874 gave was incorrect. My recollection is the balance sheet I examined was for the year ending December 31, 1920. I have not that here. The report referred to on the Jewel Tea Company is in print. It was published for its stockholders. There is nothing confidential about it that I
2875 know of.

(Mr. Aldrich then stated that he would produce the document in question. The witness then stated he would like to make another change.)

On Page 2849 in answer to a question relating to interest I said "I didn't say that." My impression at the time was that the first question on page 2845 related
(2995) to interest paid. Referring to interest on borrowed
2876 capital, that is, proprietor's capital, and therefore answered, "I didn't say that." I find however upon reading the transcript that I did say that the question of whether interest should or should not be allowed on capital invested, in order to ascertain profits, is a question of accounting ordinarily, and I wish to stand by that
2877 answer. What I mean by that is that interest on proprietor's capital is not deductible in arriving at profits. Interest actually paid or accrued on borrowed money is a deductible expense in arriving at profits, whereas interest on capital supplied by the proprietors of the business is nothing but a part of the profits.

I now remember that on page 2845 of the record I was asked the following question:

"In your opinion is the question of whether interest should or should not be allowed on capital invested in order to ascertain profits a question of law or a question of accounting,"

and I answered that question at the time:

"It is a question of accounting ordinarily."

As to whether I now say that at that time when that question was put to me I then believed that the question had to do not with interest on capital invested as distinctly

stated in the question, but had reference to the question of the payment of interest by the merchant on borrowed money, I will say that is my recollection at the time I
2878 answered the second question. I now have a recollection on that matter. I now say that I regard the allowance of interest on capital as a legal matter in an accounting of this sort.

(Mr. Mayer then asked the witness whether in his opinion as an accountant the question as to whether
(2996) interest should or should not be allowed on invested capital in order to ascertain profits is one of law and not
2879 one of accounting. The witness answered that as an accountant he would say it should not be allowed. Mr. Mayer moved to strike the answer from the record as not responsive. The Master allowed the motion. Whereupon Mr. Mayer withdrew the question.)

I don't care to make any further corrections.

2880 February 6, 1922. 2 o'clock P. M.

(The question as to whether one or two reports should be made in this case came up for discussion. The Master stated that ever since the order was entered directing the Wrigley Company to account for the profits of the two foreign companies it was the Master's intention to make separate findings as to the profits or losses of those two companies, and if the testimony in regard to the West Virginia Company should be completed before the testimony relating to the foreign companies, to make a report of the profits of the West Virginia Company without waiting for the completion of the testimony in relation to the foreign companies; that if the testimony should be closed at the same time he probably would cover the matter as two parts of the same report; that he had had one
2881 fixed idea, and that was to report separately on these matters and not allow one to delay the other.)

(2997) The master then asked counsel for the Wrigley Company whether they would agree that the Master could make separate reports. Thereupon Mr. Mayer stated that before answering the Master's question, he wished to know whether he was correct in his saying that the Master's decisoin with regard to the Canadian accounting was not based upon any disputed question of fact, but was merely a conclusion of law based on undisputed

evidence, and the Master and Mr. Aldrich both stated that such was their understanding. Counsel for the Wrigley Company then stated that they objected to the filing of separate reports.

(2998) W. W. VINCENT, resumed the stand for further
2882 cross examination by Mr. Mayer.

The Witness: I have here the working sheets that have heretofore been produced. I have Touche Exhibit 1 for identification before me now. I cannot give the exact date on which that was prepared. I have no means of ascertaining it. My time sheets would not show. I
2885 have not brought my time sheets here. I have a summary here of the time we spent on the work. The summary which I now hand to Mr. Mayer is a summary of the time sheets, the number of hours that were spent each day on this work. The time sheets themselves would show, in addition to that, the time I might have spent on some other work. By "other work" I mean work in no way connected with the Wrigley Company. Those time sheets will not show the nature of the work that was done on any specific day with respect to the Wrigley accounting. Some of the time sheets may show that the men were working on advertising, for instance, but they would not show just what class of work they were doing,
2884 whether they were looking up invoices or tabulating some figures from the books. The original time sheets, if I had them here, would not show when I was working on this first long hand draft of the report which I prepared.

(Mr. Mayer then offered in evidence the summary of the time sheets, which was objected to by Mr. Aldrich as being immaterial and incompetent. The objection was overruled and the said time sheets were received in evidence and marked Touche Exhibit 22. Said sheets show the following with respect to the number of hours put in on the work in question by Whitworth, Vincent and Hagberg:

1920	Whitworth	Vincent	Hagberg
May	26	95	
June		101	111
July		74	166
August		12	148
September	1		184
October	2	47	147
November	16	132	173
December	8	70	172
1921			
January	4	73	9
February	1	10	
2884-G April	2		
October	13	50	11
	73	664	1121

The said Exhibit also showed 1050 hours put in on the work by eight other persons connected with Touche, Niven & Company.)

The Witness: On the Exhibit the figures under the names of the individuals means the number of hours that each one of those men spent on this work. The names at the top of each page are the names of employes of Touche, Niven & Company who worked on this Wrigley accounting. There is one man there that is not there now. His name is Brandt. I don't know what his initials are. The figures in the last line of the last page represent hours. Touche Exhibit 22 would indicate that the first work that was done by Touche Niven & Company in connection with the Wm. Wrigley Jr. Account was on May
2885 10, 1920. On that day Mr. Whitworth spent six hours and I spent eight hours. And services were rendered in May, in June, in July, in August, in September, in October, in November, in December, 1920, and in January, February, April and October, 1921, on the dates indicated on Touche Exhibit 22, and by the persons named in that exhibit and for the number of hours indicated thereon.
(3000) The exhibit shows that 2,908 hours were spent by the
2886 Touche, Niven & Company people in connection with this Wrigley accounting up to October 31, 1921.

In 1920, an accountant's day was calculated at eight hours to the day; in 1921 on the basis of seven. At eight

hours a day the 2908 hours spent would aggregate a little over 363 days.

Touche Exhibit 1 for identification is the first draft which was prepared of my concern's report as to its investigation of the Wrigley accounting. The document is
2887 in my handwriting. The whole document is in long hand. I have no information since I have testified which would lead me to want to correct my testimony already given that the document was written out by me in the month of December, 1920, and January, 1921. I have not undertaken since my previous examinations to verify that particular testimony. I do not want to change my testimony that there were only two drafts of the Touche Niven & Company reported prepared, namely, the one in long hand written out by me and now before me, marked "Touche Exhibit 1 for identification," and a typewritten draft which was made from Exhibit 1 for identification
2888 I don't recollect that there was any change between the typewritten draft and the filed report. As a general thing, the first typewritten draft was a copy of Touche Exhibit 1 as it was corrected on its face. We may have made some changes on the typewritten draft. They will appear on the face.

I have said in substance in Touche Exhibit No. 1 for identification that I have prepared computations which show that the profits on the sale of Doublemint during the accounting period were $2,817,054.11, and that those figures show a difference when compared with the ac-
(3001) counting filed by the Wrigley Company of $3,089,-681.64. I have my typewritten draft before me. Those
2889 figures were not changed in the typewritten draft. The same figures were originally typed and then changed. The typewritten draft to which I have been referring has been marked "Touche Exhibit 2 for identification." As originally typewritten it was dated "Chicago, January ——, 1921," and it now has written over the date "January ——" the words in pencil "Oct. 25," so that that typewritten draft now reads "Chicago, Oct. 25, 1921." The writing "Chicago, Oct. 25, 1921" looks like Mr. Whiteworth's handwriting.

On page 2 of my original long hand draft marked "Touche Exhibit 1 for identification" there appears on the margin in lead pencil the following: "% arrived at by W. W. adopted by us." The sentence just quoted

2890 from the margin is in my handwriting. So far as I recollect the per cent referred to in that marginal memorandum is the percentage of Doublemint sales to all sales.

As to whether we adopted the Wrigley Company's percentages without testing them for accuracy, I will say I think we tested them. I am quite sure we tested them and found them to be accurate.

Page 3 of the Touche Niven report which is filed as Larson Exhibit 132 shows that I included an item reading:

"Interest received on notes and accounts in addition to such interest allowed in statement of accounting filed by the Wrigley Company $100,413.08,"

which did not appear in my first long hand written draft of the report marked "Touche Exhibit 1 for identification." My recollection is that I discovered that omission,
2891 but it had not been forgotten. It was not forgotten
(3002) when I made the first report in longhand. We made no change in the interest account in the original draft.

As to whether I think that subsequent to the making of the original draft which was finished in January, 1921, I discovered that I had omitted this item of over a hundred thousand dollars, I would not call it a discovery. I knew about it all along. We intentionally omitted the interest from the first draft until we could consult with Mr. Aldrich about the interest.

As to whether, prior to the preparation of that first longhand draft, Touche Exhibit 1 for identification, I had consulted with Mr. Aldrich with respect to the subject of interest, I would not say that we had not, but we had not
2892 reached any conclusion. I consulted with Mr. Aldrich intermediate to the time of preparing the first draft and the preparation of the second or typewritten draft marked "Touche Exhibit 2 for identification," and as a result of that conference this item of $100,413.08 was included by me, and it now appears in the report as filed with the Master. The inclusion of that item, if the Master approves of it finally, will be beneficial to the Larson Company and costly to the Wrigley Company.

I do not think there appears in the first longhand draft that I prepared the following, which appears on page 4 of the Touche Niven & Company report filed herein:

"For the period from July 28, 1914, to December 31, 1915, and for the last two periods of 1918, viz, from Sep-

tember 1, to October 4, and from October 5, to November 12, the Wrigley Company included in its statement all interest received on bank balances and loans and interest paid on Pulver notes, but for the periods of 1916, 1917, and January 1, to August 31, 1918, only a portion of interest received on loans was included."

2893 It appears in Touche Exhibit 2 for identification. The subject matter of that part of page 4 of the filed (3003) report just quoted and which I say was omitted in the first or longhand report was inserted as the result of this conference which we had with Mr. Aldrich. The phraseology of the matter is my own. I don't know just what time this conference took place. I did not keep a memorandum of the conferences I had with Mr. Aldrich. A reference to the conferences with Mr. Aldrich would not appear on my original time sheets, or the memoranda I originally made, or at any time made with reference to that subject.

In my first longhand report, Touche Exhibit 1 for identification, I had a summary of the Wrigley Company's apportionment of agate lines carried in newspapers and the percentage on which the cost was apportioned by them. I have erased from that summary in that original 2894 longhand document a line underneath those percentages which gives the totals. The line reads as follows: "Totals 1914 to 1917." I marked through the figures "19,546", under the column "Spearmint agate lines" and under the next column in that longhand report under "Percentage" I had "38.33" and under the next column headed "Doublemint Agate Lines" I had written "25,622," and under the next column headed "%" I had "50.24," and under the next column headed "Juicy Fruit Agate Lines", I had "5,832," and under the next column headed "%" I had "11.43," and under the next column headed "Total" I had "51,000." That line containing the totals just read was not copied in the typewritten draft of the report "Touche Niven Exhibit No. 2 for identification." It was ommitted because it did not mean anything. The erased 2895 line was originally prepared probably for the purpose of getting an average there. I don't remember.

I did not say in preparing this filed report, under the (3004) heading of "Bill Posting," as shown on pages 6 and 7 of the filed report, that only 13.44% of the total bill posting expense is shown on the invoices and other rec-

ords of the company, and that the balance, 86.56% of the bill posting expense is not shown on the invoices. My filed report on page 7 says:

"Expenditures under bill posting for printing and lithographing could be allocated as between Doublemint and other brands more or less correctly from the invoices and other records of the company, as the invoices show a reference to the design, but this portion of the bill posting expense represents only 13.44% of the total bill posting expense. The balance of bill posting expense, 86.56%, represents payments for services, space rentals, etc., and these invoices contain no particulars on which to base an apportionment as between brands of gum."

I could make a calculation which showed those two percentages by reference to the invoices. The calculation
2896 is a matter of a few minutes. The compilation of the figures may have required several weeks. It was at my own suggestion that I prepared those percentages. I thought it was material, for the reason that the invoices did not contain the necessary information for making an apportionment. As to why I thought it was material to give the percentages rather than to make the statement that the information was not ascertainable in its entirety from the invoices, I will say I would prefer to give some indication of that portion of the total which we could verify.

As to why I didn't do the same thing as to all the other items of advertising, like newspapers and magazines, like foreign advertising, like walls, like street cars, I will say because the newspapers were not available for inspection, as we have said in the report. I will also say that all
2897 classes of advertising are not apportioned on the same
(3005) basis; that is, for instance, newspapers, the agate line is the unit of measurement.

I mean to say to the Master that the Wrigley Company did not apportion the expense of newspaper advertising and the expense of bill posting on the same proportion
2898 and on the same ratio. I have told you the only reasons that I had for figuring those percentages of 13.44% and 86.56% on page 7 of the Touche Niven filed report. I dealt with each class of advertising under a separate heading and undertook to show the apportionment that the Wrigley Company made, and our objection to it. As to whether I went through all the invoices for bill posting

covering the 86.56%, I will say I could not tell you whether we saw every invoice or not. I think I am safe in saying that we saw a very large percentage of them. I do not admit that we did not see all of them. I will not say that I did see every one of them. I did not do that part of the work personally. I will admit that unless all were examined you could not safely make a statement as to what was or was not in all of them. I
2899 am not prepared to say that I saw every one of the bill posting invoices. I don't recollect that I went to any sources other than the invoices to find out what those bill posting expenses were incurred for. As I said before, I did not do that portion of the work myself.

I did not personally examine the Wrigley Company's shipping sheets, that is, the sheets that show the posters
2900 that have been shipped out and the places to which they have been shipped and when they were shipped and what was shipped. I have no personal knowledge upon that subject. I did not compile those figures.

On page 8 of my filed reports I say that:

(3006) "The records pertaining to street car advertising were found to lack the same essential information for a proper apportionment as was explained under the caption of 'bill posting,' that is to say, that whereas the invoices covering the charges for printing and lithographing contain a reference to the design and thus permit of an apportionment of this part of the charge, the greater part of the invoices, to be more specific 95% of the money value thereof, is for space rentals, services in connection with placing and replacing car cards, reshipping charges, etc., and such invoices contain no such particulars of the design or other data on which an apportionment could be based."

2901 I had something to do with examining the records or books of the Wm. Wrigley Jr. Company with reference to the subject matter of that statement. I supervised it, but I did not do the clerical work. I did not myself examine all of those invoices as to street cars. I myself did not examine any other books or records kept by the Wm. Wrigley Jr. Company which would throw any light upon their street car advertising. I did not personally examine the photographs of the advertisements themselves for the purpose of seeing in each instance what was advertised or what space was used by the advertised products.

I made the statement with regard to the street car advertising on the authority of one of our men whom we re-
2902 gard as reliable. Personally I did not examine these invoices as to whether I can make no statement to the Master under oath as a witness as to the correctness of these various references in the filed report with respect to the difficulties that I had in determining whether the Wrigley Company properly charged the advertising expenses to Doublemint or not, I will say the invoices were referred to from time to time.

I know as an auditor that a concern might keep records, documents and papers other than invoices which would show their advertising. As to whether I know, as a mat-
(3007) ter of fact, that the Wm. Wrigley Jr. Company did keep books containing photographic copies or actual printed copies of their advertising, I will say I have seen some photographs. I did not go through them all for the purpose of ascertaining whether or not the Wm. Wrigley Jr. Company made a proper allocation of their advertising. I did not personally even examine all their invoices to see what they showed or did not show.

As to whether, in my various references in this filed report to the difficulties of ascertaining whether the Wrigley Company properly allocated their advertising expenses, such statements were made, not upon my personal knowledge or investigation, but were made relying upon what some of my associates told me, I will say I saw some of the invoices personally, but I did not see them all.

I do not know of my own knowledge that persons connected with Touche Niven & Company, including myself, examined all the shipping records, all the inventories, all
2904 the card indexes, all the advertisements themselves and all documents and records that the Wm. Wrigley Jr. Company kept respecting advertising. I would not say to the best of my knowledge and belief that they were all examined by any of the persons working for Touche Niven & Company. We did enough to satisfy ourselves that the statement we make here is correct. I take it that we undoubtedly did not examine all the card indexes
2905 and every document that the Wm. Wrigley Jr. Company had on advertising. It would have taken us years to do that. What we undertook to do was to examine the invoices and other accounting records that the company

had, for the purpose of satisfying ourselves as to those apportionments. I do not pretend to know from my personal knowledge whether all of the invoices were ex-
(3008) amined. I personally know that I didn't examine all of them or all of any class of documents.
2906 We did not make any examination of any of the documents in the possession of the advertising agency of Stewart Davis. We did not go to their office, I think, at all. I didn't call for any documents in their possession. I have no personal knowledge whether any of my associates did. I have had no discussion with Mr. Aldrich or Mr. Whitworth or any of my associates or superiors on the question of burden of proof in this case. There has been no discussion that I know of as to who must make the segregation—whether the Wrigley Company has to make it or whether the Larson Company has to make it. I don't know anything about that at all.

In my first longhand draft of a report, Touche Exhibit 1 for identification, I had something like photographs 5
3907 and 6 on page 9 of my filed report, and like paragraph 8 of page 10 of my filed report. I personally did not examine all the advertisements of the Wm. Wrigley Jr. Company that they used during the accounting period. I personally did not make any investigations of the written instructions that were given to the detail men as to what work they were to do. I cannot state of my own knowledge whether those instructions were examined by any of my associates in working on this matter.

If those detail men had been working only on Doublemint and on no other brands, their salaries and expenses would be properly deductible from the Doublemint receipts, in order to ascertain the profits earned by Doublemint. If they were engaged exclusively on Doublemint
2908 they would be chargeable against Doublemint.

(The witness was then asked, if the detail men were
(3009) engaged exclusively in pushing sales of Spearmint and Juicy Fruit, whether he thought any part of their expenses and salaries or commissions ought to be charged to the Doublemint account. Mr. Aldrich objected on the ground that this was a legal question. The objection was overruled. The witness answered no.)

Page 12 of the Touche Niven Company filed report contains a reference or assumes that fifty per cent of the amount expended for advertising each year represents

the cost of advertising specific brands, and that the remaining fifty per cent should be treated as a sort of an expense for building up the trade name and good will, and which also assumes that the good will benefits would cover a period of three years subsequent to the time of the expenditures, and then on the same page I have made some calculations based upon those assumptions. I don't see anything like that in my first or longhand report marked "Touche Exhibit 1 for identification." I don't find that there is any such thought or language in my
2909 first longhand written report marked "Touche Exhibit No. 1 for identification."

My typewritten report, Touche Exhibit No. 2 for identification, contains a reference to the same subject matter as page 12 of my filed report. I am referring to this paragraph in Touche Exhibit No. 2 with reference to the residual value:

"It should be remembered, however, that this method of apportionment, viz., on the basis of sales takes no account of the unquestionably large residual value accruing to the Wrigley Company by reason of the volume and style of advertising during the accounting period. The amount thereof, when determined, would be a credit to the advertising account and the proportionate amount to Doublemint account."

The same language appears on page 12 of the filed report as I have just read from Touche Exhibit No. 2 for
(3010) identification, but neither of the reports, Touche Exhibits 1 and 2 for identification, contains any suggestion as to treating fifty per cent of the amount expended for
2910 advertising as representing the good will, and neither contains any reference to treating the good will as expending over a period of three years. We made no attempt in the original to calculate the amount. It is my recollection that it was Mr. Niven who first suggested to me or any of my associates putting anything in this filed report of the kind I had alluded to on page 12 referring to fifty per cent division for good will and a fifty per cent distribution among the specifically advertised brands and a spreading of the fifty per cent for good will over three years. Mr. Niven was passing through Chicago and Mr. Whitworth and myself discussed the matter with him. I don't know the date of that dis-

cussion. It was prior to the completion of the filed document. I think it must have been after January, 1921. I cannot fix the time any nearer. Mr. Aldrich was not present at the conference. I don't recollect that we dis-
2911 cussed with Mr. Aldrich the matter respecting this fifty per cent allowance for good will spread over three years and allocating the other fifty per cent among the specifically advertised brands, except that I think Mr. Aldrich saw the report in draft before it was typewritten. My recollection is that Mr. Aldrich saw the first longhand draft, Touche Exhibit No. 1 for identification, before the preparation of the next report, being the typewritten report marked "Touche Exhibit No. 2 for identification." I don't remember whether Mr. Aldrich saw Touche Exhibit No. 2 before it was put into the final shape in which it was filed. I don't believe he did. There was no effort
2912 to conceal anything from Mr. Aldrich with respect to my reports and work and views.

(3011) I regarded the Larson Company as my employer in this matter. I didn't regard Hoyt, Little & Company as my employer. I didn't report to them or their representative. I am referring to myself personally. I am not attempting to testify as to what Mr. Whitworth did. I have no knowledge on the subject as to whether he was in communication and conferring with Hoyt, Little & Company pertaining to this report and its contents before it was filed with the Master.

In my longhand report, Touche Exhibit 1 for identification I say, while discussing U. P. S. Coupons the following:

2913 "In the first place, we have accepted as correct the percentages worked out by the Wrigley Company as being the ratio of Doublemint sold with United Profit Sharing coupons to all coupons issued as these percentages were apparently confirmed by Marwick, Mitchell & Company."

I had no instructions or directions to take those percentages as correct. As to whether I made a sufficient test and examination to satisfy myself that the percentages worked out by the Wrigley Company were correct, I will say I don't recollect that I checked these figures. As I say, they were apparently confirmed by Marwick, Mitchell & Company, and I accepted them. I accepted

those Wrigley percentages merely because they seemed to have been confirmed by Marwick, Mitchell & Company.

The last paragraph of page 15 of Touche Exhibit 1 for identification shows that some interlineations or changes were made and that the whole paragraph was lined out. The last paragraph on that page as it was corrected before it was lined out entirely read:

"In view of the experience of the company during the past four and a third years as disclosed by these figures showing that only 26.30% of coupons issued were redemed and having in mind the distribution of undoubtedly
(3012) a considerable portion of coupons in territories remote from any redemption stores, it would appear that a reserve based on 33 1/3% of the redeemable value of coupons issued would be ample to provide for all coupons to be presented for redemption."

2915 February 7, 1922.
10:30 A. M.

W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer:

The Witness: I have before me Touche Exhibit No. 1 for identification. On the page now marked "20" and originally marked "24" of this exhibit I have a caption reading: "Interest on capital invested (Exhibit 1)". Page 25 of that original longhand draft is now before me.
2916 Reading from my original draft in longhand, Touche Exhibit 1 for identification, beginning with the bottom of page 25, to the end of the first sentence on the following page, I will state that the following was originally written there:

"We understand moreover that Mr. William Wrigley, Jr. testified that no additional facilities were required for the manufacture of Doublemint and that the evidence shows that Doublemint was sold at the same price through the same jobbers and on the same terms, viz., two per cent ten days, thirty days net, the Wrigley Company in our opinion would not be entitled to charge interest except on the capital actually employed in manufacture and only for the time so employed."

It is a fact that on page 25 from which I have read

there appears in pencil on the left hand side an interrogation point opposite the part reading as follows:

"We understand moreover that Mr. William Wrigley Jr. testified that no additional facilities were required for
(3013) the manufacture of Doublemint and that the evidence shows that Doublemint was sold at the same price."

I think I put that interrogation mark there. I don't know when. Put there evidently for the purpose of veri-
2917 fying the statement. I verified that statement; otherwise I would not have passed it. I think Mr. Aldrich told me about Mr. Wrigley's testifying that no additional facilities were required. I don't know when he told me. I don't know that I would have reached a different conclusion on the subject of interest on invested capital if, as a matter of fact, I am mistaken in supposing that Mr. Wrigley testified as I said in that reprt. If he so testified, it was further proof that no additional money was put into the business for the purpose of manufacturing Doublemint.

As to whether my conclusion that interest on invested capital should not be allowed is dependent at all upon the question whether or not additional capital was used for the manufacture of Doublemint, I will say I can't
2918 say yes or no to that question. I think it is a legal matter that the court will have to pass on, the interest on capital. As a matter of accounting, I would disallow it, but whether it is allowable in this case I think is a question of law. As a matter of accounting, I think that interest ought to be disallowed on invested capital. I am referring to it as a general proposition and as applied to this case also. As a general statement and in this case too, I do not think, for the purpose of ascertaining the profits, that interest on invested capital ought to be disallowed, regardless of the question whether the merchant has used additional capital in connection with the particular product.

2919 As to why I put in my report the statement that I
(3014) understood that Mr. Wrigley's testimony was that no additional facilities were required for the manufacture of Doublemint, and why I stressed that statement so much as to put an interrogation point opposite my statement and find it necessary to confirm its truthfulness, I will state that I wanted to verify the statement to be sure I was correct in making the statement. I wanted

to state all the facts that came into my possession and leave it up to the Master to make his decision. I don't
2920 know in what portion of the record Mr. Wrigley's statement that no additional facilities were required for the manufacture of Doublemint is made, but I read the record and I think Mr. Aldrich confirmed it.

As to whether I read that part of the record in which Mr. William Wrigley Jr. testified with regard to the changes that took place in the company's business after Doublemint was introduced and where he said that after 1914 the advertising was increased very considerably, I will say I may have read that. I did not read the evidence closely. I don't remember whether I did or did not read that. I probably did. If I had read it I would not have altered that statement that I made as to Mr.
2921 Wrigley's testimony.

I don't remember that I read the testimony of Mr. Wrigley to the effect that the company's manufacturing force increased from time to time after January 1, 1914. I probably did if it is in the record. I scanned it.

I don't remember a part of the record that states the amount of earnings of the company that were left to accumulate and were not distributed as dividends.

I don't remember any specific passages in the record showing the increase in the working capital of the com-
(3015) pany from time to time after January 1, 1914, and during the years 1915, 1916, 1917 and 1918. I examined the books with a view of seeing what the surplus was from time to time during the accounting period. I know that the surplus from time to time increased as surplus
2922 accrued from earnings. As to whether all the earnings of the Wrigley Company were paid out in dividends, I would have to refer to my records to find out. I don't know whether the balance of the surplus at the end of the period is in excess of what it was at the beginning or not. If the company was during the accounting period from time to time earning more moneys than it was paying out for dividends, that surplus would be an increase in capital.

I have not studied the business of the Wm. Wrigley Jr. Company during the accounting period so that I am enabled to express an opinion as to how much working capital would have been needed in that business if they had manufactured no Doublemint. I do not claim to be in a

position or to have made any investigation of the question to enable me to say to the Master how much additional capital was required in that business because of the Doublemint business. In this case I was talking
2923 about additional facilities; that meant machinery and not working capital. By the word "facilities" I certainly didn't mean working capital. When I said on page 17 of my filed report that I understood that Mr. Wrigley Jr. testified that no additional facilities were required for the manufacture of Doublemint, I didn't mean merely that no additional machinery was needed. I meant facilities. That would cover machinery and buildings and factory equipment. Factory equipment covers anything that is not buildings and machinery in the way of transportation around the plant. I did not make any study
(3016) of the facilities, but I think I saw Mr. Wrigley's testimony, and I am quite sure that Mr. Aldrich confirmed
2924 what I said here.

We did not investigate the manufacturing cost of Doublemint at all. We did not make any investigation to see what machines or what equipment was purchased from time to time, by investigation of the records or otherwise. We made no investigation of any kind as to the number of employes that the Wm. Wrigley Jr. Company had during any year of the accounting period or as to the size of the factory or the extent and quan-
2925 tity of machinery and equipment they were using at any time.

As an accountant, in my opinion, in order to ascertain profits, interest should not be allowed on a merchant's investment. If a manufacturer operates one branch of his business in rented premises, I think the rent paid for those premises should be charged as an expense of the business. If that manufacturer has another branch business and operates that second branch business in his own premises, I do not think he ought to charge interest for the use of his own premises. I don't see that any injustice is done to the branch that is operated in the leased premises by charging rent as an expense for the leased premises and no expense for the branch operated in his own premises.

2926 I do not expect to find every branch of a business making the same per cent of profit. I do not expect a business to make the same per cent of profit on every

article that it sells. I think a merchant can correctly determine his profit before he knows the amount of his investment together with interest thereon. If a plant once used to manufacture an article which we will call "A" ceases to manufacture that article and then manufactures
(3017) another article which is an infringing article, and which we will call "B", the plant is no less an investment for the manufacture of the article "B" than if a new plant were purchased for such manufacture.

2927 As to whether, in my opinion, it makes any difference what the prior use is of a plant when it comes to determine whether interest should be allowed on the use of that plant for making some other articles, I will say the prior service of the plant would not have any bearing on it.

If the Wrigley Company had a vat in which it mixes the constituents of gum and had a machine with which it wrapped gum, and was using that vat and that machine for making non-infringing articles and then used the same vat and the same wrapping machine to make an infringing article, as to whether I would treat that vat
2928 and that wrapping machine as an investment for the infringing article, I would say that in that case, if I was the accountant in such an institution and I was asked by
2929 my employer to let him know how much he had got invested in the infringing business, I would not exclude the value of that plant which heretofore had been used for other purposes but which was now being used for an infringing purpose. If this plant was used for the infringing purpose, it should be so treated without regard to its prior use.

On page 17 of the Touche Niven filed report, being Larson Exhibit 132, I saw, while discussing this subject of interest on capital invested that:

"The decree instructs that expenses and outlays shall be deducted in ascertaining profits on Doublemint sales, and inasmuch as the items of interest charged by the Wrigley Company in its accounting do not represent ex-
(3018) penses or outlays, nor even entries recorded in the books, the items should be disallowed."

2930 I think that language was in the first instance my own. The decree to which I referred in that language is the decree under which the case now on hearing was referred to Master in Chancery Morrison.

As to whether I base my conclusion in this case that interest should not be allowed upon invested capital because of that decree of reference I will say, as an accountant I don't think it has any place in the figures for the purpose of determining profits, and I also understood the decree to instruct that actual expenses and outlays should be deducted from the proceeds of sales.

As to whether I would have allowed interest in this case on the investment for Doublemint if I had not interpreted the order of reference to the Master as forbidding it, I will state I would not. As to why I stated in the first report that I wrote out, Touche Exhibit 1, that I thought that interest should be allowed, but only
2931 for the time so employed, I will say that that had reference to the interest employed as working capital. As to whether I would have allowed interest on the working capital, but only for a short time, if it had not been for my interpretation of the decree of reference, I will say I would have allowed interest on the working capital for the time that it was so employed and deducted from that item the interest on the profits which accrued to the Larson Company. I would have limited the interest to the working capital and not have allowed interest on the physical investment, such as plant, machinery and equipment used in the manufacture of the infringing article, for the reason that I understood that Mr. Wrigley testi-
(3019) fied there were no additional facilities purchased for the manufacture of this Doublemint gum.

As to whether, if I had not understood that Mr. Wrigley so testified, I would have allowed interest on the fixed investment as well as on the working capital, I will say I would have calculated the interest and left it
2932 up to the Master to make a decision as to whether it was proper. If I had not been under the impression that there were no additional facilities required by the manufacture of Doublemint, I still would not have allowed interest on the capital. I think that's a legal matter and I would have arranged it so as to give the Master the facts and let him decide the question. I think the allowance of interest on equipment and fixtures and plant is a legal matter. I think that the allowance of interest on working capital is a legal matter.

As to the question as to why I, in my first report, as originally written by me, permitted interest to be added

but only for a short time, and why I now say that I intended to limited it to working capital, I will say I don't include it in the figures in any place. In other words,
2933 I never made any calculation as any time as to what the interest would be on the capital invested, either as to working capital or plant or anything else.

As to the question as to whether it is to be understood that it is my opinion as an accountant that in no instance is it proper accountancy practice to allow interest on invested capital in a case where the owner of the invested capital, in the usual course of business, is using it in a business enterprise, whether infringing or otherwise, I will say no. If he charges against his income interest on his capital, he would have simply to credit another income account for the same amount because it is not an
(3020) outlay, it is not an expense that he has to meet, and it simply goes into one pocket and comes out the other, so he is no better off, and it does not change his status in any way if he charges interest or does not charge it so long as it is with himself.

2934 But if he is determining or attempting to determine the profits that he has made on his business for a given period, he would, as an accounting practice, if he owned the plant himself, calculate a reasonable interest on the value of that plant to enable him to determine what his net profits were. There would be no objection to his making the calculation, but it would not change his net income for the year if he did make it because he would charge into his expenses the amount of interest; he would necessarily have to credit some other income account, and it would go in as a debit on one side and come in as a credit on the other, so his net profits for the year are not affected.

As to whether I would still say that the owner was not entitled to charge interest on the capital actually invested in the business if a third party should become entitled to those profits, I will say I think that's a legal matter. As an accounting practice, I would not say that he should charge his interest on his capital for the purpose of ascertaining what his profits were. As a legal proposition, if he is entitled to interest, that would be a deduction from
2935 his profits otherwise shown.

(3021) Tuesday, February 7, 1922. 2:00 P.M.

2936 W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer:

I testified this morning that when I originally wrote Touche Exhibit 1 for identification that interest should be allowed on capital actually employed that I meant by the use of the word "capital" only the working capital. Where a merchant puts a hundred thousand dollars into a plant that is used in his manufacturing business, or puts the same hundred thousand dollars into working capital, it is one hundred thousand dollars in each instance, and if interest is allowed on the working capital, the same reasons would require the allowance of interest
2937 on the plant. I still say I meant by the use of the word "capital" in my original longhand report only working capital, and not the total capital invested. I do not recollect that at the time I wrote that report and wrote that the Wrigley Company was entitled to interest on
2938 capital that I had Mr. Aldrich's views on that subject. We discussed the matter of interest on capital with Mr. Aldrich, but I don't remember whether it was before or after I wrote my original report. As to whether, if I wrote out what I did in my first report, it must have been because I disagreed with Mr. Aldrich's views, I will say it was finally decided to leave the matter of interest on capital open for decision as to whether or not it is allowable. I mean it was finally decided to leave the question of interest on capital open to be determined purely
(3022) as a matter of law, and not as a matter of accounting. I think that decision was reached between Mr. Aldrich, Mr. Whitworth and myself. The final conclusion reached
2939 between Mr. Aldrich, Mr. Whitworth and myself was to treat the question of interest on capital invested entirely as a matter of law, and not at all as a matter of accounting. It is my opinion that it is a matter of law and not a matter of accounting. From the conference at which Mr. Whitworth was present, I understand that he concurs in my opinion. What I have said as to interest on capital invested applies equally to interest on capital invested in patents and patent rights.

Touche Exhibit No. 7 consists of three typewritten

2940 pages, on white paper and one sheet in pencil handwriting on yellow paper.

(Said four sheets of Touche Exhibit 7 for identification were marked Sheets 1, 2, 3 and 4.)

The first sheet of Touche Exhibit is entitled, "Memorandum for Mr. Whitworth." I testified that that document, Touche Exhibit 7 for identification, consisting of four sheets, was prepared by me. The four sheets of that document are in my handwriting. I do not remember the date Touche Exhibit 7 was prepared, but I think it was the early part of the investigation. The work of
2941 Touche, Niven & Company first began on this matter on May 10, 1920. Touche Exhibit 7 was prepared after May 10, 1920. I do not know how long. It is not dated, and I don't remember, but I have no independent recollection. An examination of Touche Exhibit 7 shows that
2942 on page 3 there is a figure that appears to use the date of May 14, 1920. That is in my handwriting. It would appear that part of Touche Exhibit 7 was made on May 14, 1920. I am not positive, but the date would indicate
(3023) that it was prepared about that time. I should say that the entire Touche Exhibit must have been prepared
2943 on or about May 14, 1920. It was prepared at the beginning of a kind of a program of audit. The following appears on sheet 2 of Touche Exhibit 7:

"Mr. Aldrich state that the evidence shows the gums are sold at the same price, through the same jobbers and on the same terms, viz., two per cent. ten days, thirty days net, and that no additional facilities were required for Doublemint business. For that reason he contends that if Doublemint is chargeable with any interest on capital at all, the amount should be calculated on the capital actually employed and only for the time so employed. He stated that gum sold in one month is collected for in the next, and that the profit therefrom is put back into the business. His idea, I think, is that if interest is allowable, it should be restricted to interest on cost of sales less profit on Doublemint."

In preparing Larson Exhibit 32 I adopted some of the exact language that has just been quoted from Touche
2944 Exhibit 7. Mr. Aldrich's contention, as it appears in Touche Exhibit 7, is my language from memory after we had the first conference with Mr. Aldrich. The first conference with Mr. Aldrich, at which I received his con-

tentions, must have been about May 10, 1920. When I was first employed in this Wrigley accounting matter I had a conference with Mr. Aldrich in which Mr. Aldrich talked about some of the items of deduction that appear on the account filed with the master by the Wrigley company, but he did not give me his views on each one. At
2945 this conference I am sure Mr. Aldrich did not refer to all of the items. The conference was brief, and he only told us about some of the main items. I do not know which ones he told us about.

Touche Exhibit No. 7 is what it purports to be, namely,
(3024) a memorandum that I prepared to submit to Mr. Whitworth. Mr. Whitworth was present at the conference with Mr. Aldrich in which I obtained some of Mr. Aldrich's views. Touche Exhibit 7 was prepared merely as a reminder to refresh my recollection rather than to communicate something to Mr. Whitworth that he theretofore did not know. I have not examined any law or authorities on the subject of whether interest should or should not be allowed on capital in ascertaining profits.
2946 Mr. Aldrich never asked me to read any decisions on that question. They may have been mentioned in the conference. I don't remember specifically just what was said at that conference. I remember in a general way that we talked about it. I understood that there were conflicting decisions as to the date from which interest should be allowed on capital invested. My recollection is that some decisions were that interest on capital accrued from the date of the master's finding. I understood that other decisions were that interest on capital accrued from some other date. I am not sure now whether those de-
2947 cisions refer to interest on capital or interest on profits. My recollection in regard to that is hazy. There was a discussion between Mr. Aldrich and myself on the question of interest on capital invested. I do not remember what Mr. Aldrich told me the law on the subject was. I do not remember that he told me that the law on that subject was in doubt or that the decisions were conflicting. I don't remember whether he drew my attention to any decisions on that question. I didn't read any de-
2948 cisions on that subject. I do not remember any memorandum that I made of any decision on that subject. I am quite sure I made no investigation of my own. If Mr. Aldrich had drawn my attention to any authorities

(3025) or decisions on that subject, I would not have looked at them, but I think I should have relied upon Mr. Aldrich's interpretation of the decisions. As to whether I put in my report anything at all on the subject of allow-
2948 ing interest on capital invested or interest on patents used than to say I was advised to say that this is a question of law and not one of accountancy, I will say that's in substance what we did say. I made no considerable investigation on the subject. I did not investigate the method used by the Wrigley Company for ascertaining the amount of interest on capital invested that they deducted in their filed account. I made no special investigation. I reviewed their account filed with the master, which included those calculations. I do not know that
2949 I made any special investigation other than looking up the Wrigley report.

Page 17 of the filed report contains the following language:

"There is a fundamental principle generally accepted by the commercial world that interest is in effect an appropriation of profits, and since the profits from Doublemint have been held to belong to the Larson Company, a deduction of a part of these profits is not permissible."

That particular sentence is Mr. Whitworth's. I concur in its correctness. The sentence also appears verbatim in my handwriting, on the back of page 25 of my original longhand report, Touche Exhibit 1. It was a sugges-
2950 tion of Mr. Whitworth's to round out the paragraph. I do not mean to say that with the quoted sentence omitted that the balance would be unintelligle or less oratorical, or of worse literary merit. The question of rounding out the paragraph was no particular reason for put-
(3026) ting in the part that has just been quoted. There was no other reason that occurred to me for putting in the sentence that has just been read, except that I believe the statement to be a fact.

2952 (The witness was asked by Mr. Mayer whether in his opinion it was a generally accepted principle by the business world that interest on invested capital is not permissible to be deducted in ascertaining profits. Mr. Aldrich objected. The objection was overruled. The witness said that such was his opinion.)

2953 I have heard of partners being allowed interest on their investment before ascertaining the net profits of the

firm. I think they do when it is covered by a partnership agreement. If there were no agreement on the subject at all, I think the partners should be allowed interest as between themselves on their investment before arriving at net profits, even though there is no contract on the subject. I do not know whether that is the law or not. Interest is a cost for the use of capital. It does not make any difference who owns the capital if the capital is loaned.

If a merchant puts his own capital into a business, it is not proper in ascertaining profits to deduct interest on his capital invested in that business. In fixing a selling price, I think consideration should be given to the amount of capital invested in the business. Interest should not
2954 be allowed but the merchant should consider it because he would want to sell his product for enough to earn a return on his investment. The reason why a merchant should consider interest on the investment in fixing the
(3027) selling price is to know whether his business is being conducted at a profit or a loss. He would have to take out his interest as well as the cost of producing the article. In deducting or allowing interest I would take interest on working capital and consequently on fixed assets alike. If one of my clients had to determine whether it would be better for him to manufacture goods or to buy the goods he was selling, in the open market, —in order to do his own manufacturing, he would have to buy expensive machinery and other equipment and employ manual labor,—I would, in coming to a conclusion as to whether to buy the goods in the open market or whether to manufacture them, take into consideration the interest on the necessary investment, that is, on the cap-
2955 ital required for machinery and plant, etc. The ultimate object would be to see which way his profits would be greater. If the question was as to whether to carry over a stock of merchandise that was seasonal to another season, I would take into consideration the investment I had in that merchandise, and the loss of interest on it if I carried the merchandise over. My object in considering that would be to see what profits I would make, whether I would make more or less profits by carrying the goods, or possibly by cutting the price and selling them at once. In other words, my object would be to see whether it would pay me to do it or not. I mean to say

whether it would be more profitable to sell it or to carry it over.

If I had two machines in a business, one an old one and one a new one and I was trying to find out which was giving me giving me the greater profits, I would take into
(3028) consideration the cost and value of the old machine
2956 and also the cost and value of the new machine. I would consider that in connection with the output of the machines for the purpose of determining which was the more profitable, the use of the old or the new machine.

As to whether, if I were a manufacturer and business became very slack and I owned my own plant and my own machinery and my own equipment, and the question arose as to whether I should let my plant stand idle or whether I should manufacture, I would take into consideration the loss of interest on the idle plant in determining which method would give me the greater profits, idleness or operating the plant, I will say I think in that case you would not give the interest very much consideration, it would be a question of keeping your operating forces together and keeping your machinery in operating condition. The interest would run just the same whether it was
2957 operated or not.

As to whether it is customary for competent merchants and competent auditors, in determining what method of conducting the business will yield the greater net profits, considering the interest on the moneys invested in the business, whether fixed assets like plant, machinery and equipment or working capital, they would consider the interest in the questions that have been put to me, but they would not consider it for the purpose of profits earned from operating the business. I mean that they would not consider it to the extent of making entries on their books.

If I had a hundred thousand dollars in cash and immediately converted that into a plant to manufacture
(3029) tables and get the equipment to go into business, and at the end of the year my books showed, and they were kept by me with my experience, that the net assets were $110,000.00—that is to say, all of the assets less all of my liabilities, were $110,000.00—I would translate that situation into plain English by saying that I made $10,000.00
2958 profits. The books should show that. If anybody came along and examined those books, he would not find any

deduction on account of a charge for interest on investment.

As a question of accounting, and not merely as a matter of bookkeeping entries or of law, if at the end at that year I was directed to turn over all the profits that I had earned during that year to someone else, a stranger, I
2960 would turn over the $10,000.00. No such case has ever come to my personal observation before this one that is now on hearing. I do not recollect that I ever had occasion in which a person who made profits was subsequently accounting to a stranger for those profits. My experience is not necessarily limited to the way in which merchants keep their books. I know how the profits are prepared. I know what the profits are after they are prepared, and if I were directed to turn over the profits I would turn over what I considered to be the profits.
2961 If I were the person directed to turn over those $10,000.00 profits I would raise the question as to whether I should be allowed interest on the investment from an accounting point of view, and I would think it honorable to make the attempt to charge interest on the investment. In other words, I do not see anything unconnscionable about it. It is customary for the employers of business
(3030) to charge salaries for their own services. I regard
2962 it as a legitimate expense to be deducted in ascertaining the profits of the business.

If I were conducting an individual enterprise and had made $10,000.00 during the year, after deducting a salary of $6,000.00 a year, and then thereafter was directed to turn over those profits to a stranger, the salary would be regarded as part of the profits that I received from operating the business. I think it would be proper to deduct the salary, but if I were directed to turn over all the profits, I don't see how I could escape regarding the salary as part of the profits. If I were instructed to
2963 ascertain what the profits were after deducting all proper expense, and I had drawn $6,000.00 during the accounting year—as to whether I should give the other party $10,000.00 or give him $16,000.00, I would say that I would consider that I would be entitled to a fair salary.

If it were a corporation, I think it would be proper to deduct those salaries from income in order to ascertain the net profits of the business.

In the Touche, Niven report filed before the master we

said, from an accountant's point of view, interest on invested capital should not be allowed, but we did consider it a legal matter. I think I testified this morning that we did not think, as accountants, that interest on invested
2964 capital ought to be allowed, but we prepared no other tabulations than are shown in the filed report on the question of interest on capital. But I think on further reflection we did make some rough calculations of interest. That statement also comes from further reading of what has been stricken out of the first longhand report,
(3031) Touche Exhibit 1. As a matter of fact, I know in my first report, Touche Exhibit 1 for identification, that I wrote, and then afterwards marked out the following statement:

"Prepared a new statement of interest on the basis of 4%, 5%, 6% and 7% in which we have allowed the Wrigley Company interest for ninety days on sales".

That statement fell out and is nowhere contained in the report filed with the master. I don't recollect at whose suggestion that was omitted. It was left out after we decided to leave the question of interest up to the master to determine. Personally I did not prepare
2965 a table of interest based at 4, 5, 6 and 7 per cent. rates. It was done by Touche, Niven & Company. Mr. Hagberg did it. I cannot give the full names of all the persons mentioned in Touche Exhibit 22. I know the initials of only two off hand, and that is Whitworth's and myself. I will ascertain the initials of the rest so as to be able to tell them tomorrow. I do not know whether the profits made by the Wm. Wrigley Jr. Company at any time within 90 days from the sale of Doublemint gum were
2966 equal to the amount of the company's investment in plant, fixtures and working capital, in so far as they were used for the Doublemint business. I did not investigate that subject. I do not wish to repudiate the statement at the bottom of page 17 of Larson Exhibit 132, which reads:

"It is apparent that under the terms of sale any money invested in the manufacture and sale of Doublemint gum was returned to the Wrigley Company with the profit thereon within, say ninety days—probably on an average within sixty days".

The preceding sentence explains that we understand
(3032) that Mr. Wrigley testified that no additional facilities

were required for the manufacture of Doublemint, and that the evidence shows that Doublemint was sold at the same price, through the same jobbers and on the same terms, namely, 20% 10 days, 30 days net. I do not mean to say, and we did not say that, if it be a fact, the same machinery that was being used by the Wrigley Company and the same plant and the same equipment that was
2967 being used by them for manufacturing say, Spearmint and Juicy Fruit gum, as was also used to manufacture Doublemint gum, that therefore the Wrigley Company had no investment by way of plant, machinery and fixtures in its Doublemint business.

I understand the principal ingredient in the manufacture of Doublemint gum was Chicle. I do not know what proportion of the expense of the material in gum Chicle would be. I do not know how long an investment the Wrigley Company have in Chicle from the date they pay for it until they use it. That should be taken into consideration in determining whether they have an investment in the Doublemint business. As to whether I took that into consideration, I will say we took the cost of sales, which would include the Chicle. As to whether the cost of sales is an investment made by the Wrigley Company that lasts no longer than sixty or ninety days, I will say no, we understand there was a turn-over in sixty or
2968 ninety days. As to whether it was my understanding and that I based the filed report on the supposition that the investment the Wrigley Company had in the Doublemint business, which includes the material, was not for more than sixty days, or ninety days, before the returns came in, I will say it was sixty or ninety days from the time it
(3033) was manufactured.

(The witness was asked whether he did not think he ought to consider the question as to the length of time in which the investment was prior to the date of manufacture. Mr. Aldrich objected on the ground that manufacturing cost had been agreed on. The objection was overruled.)

I think we should consider the question as to the length of time in which the investment was prior to the date of manufacture, and we say that in the report that "it should be restricted to the amount of interest on the capital actually employed in the manufacture and only for the time so employed." We do not intend by that

report to give to the master as our opinion the impression that if interest is to be allowed at all it should be allowed only for sixty or ninety days. We have not drawn
2969 the master's attention anywhere in our discussion of interest on invested capital to the length of time the Wrigley Company had an investment in the materials used in their Doublemint gum.

(A discussion then arose, during which it appeared that the copy of the report filed by Touche, Niven & Company, Larson Exhibit 132, which had been furnished to Mr. Mayer by Mr. Aldrich, did not correspond exactly in pages with the filed report. Consequently, that it might develop that certain portions of the Touche, Niven filed report referred to by the witness in his testimony might not appear in the filed report on the page designated by the witness.)

(3034) At the bottom of page 17 in the report filed with the
2971 master we say: "It is apparent that under the terms of sale any money invested in the manufacture and sale of Doublemint gum was returned to the Wrigley Company with the profit thereon within, say, ninety days—probably on an average within sixty days", and we go on to say, not immediately following the quoted sentence, but in the same paragraph: "any interest should be restricted to the amount of interest on the capital actually employed in the manufacture and only for the time so employed."

2972 I have just now read only part of a sentence, the last part. The sentence quoted from the report is not modified by what I just read. I read part of that sentence because right there in that paragraph we put the whole matter of interest up to the master for decision. As to whether it is a fact that no where in the report, Larson Exhibit 32, there is not a word that draws the master's attention to the fact that the Wrigley Company had invested moneys in materials used in the manufacture of gum for a longer period than sixty to ninety days, I will say no, we make no further statement in regard to the time.

(Mr. Mayer then put the following question:

Q. Isn't it a fact that the master would be entirely justified from the words used in your final report in believing that all the investment that the Wrigley Company had in Doublemint, both for material, manufacture

and selling, was returned to it within sixty or ninety days?

(3035) Mr. Aldrich objected to the question and the objec-
2973 tion was sustained. Mr. Mayer thereupon withdrew the question, and Mr. Aldrich requested that the record show that Mr. Mayer had put the question. Mr. Mayer stated, "all right."

Mr. Mayer then asked the witness as to whether he knew how much investment the Wrigley Company had in their wax paper and wrappers and dies and wrapping machines used in connection with the manufacture and
2974 sale of Doublemint gum. Mr. Aldrich objected on the ground that the manufacturing cost had been agreed upon, and that would be an item of manufacturing cost. Mr. Mayer said he was speaking about interest on invested capital.

The objection was overruled. The witness said in answer to the question that he did not know.)

I made no investigation on that subject, and no one else did for Touche, Niven & Company so far as I know. If interest is allowable at all, it should be calculated on items such as wax paper and wrappers and individual wrappers and cartons and machinery used in connection with the manufacture of Doublemint gum. As to whether
2975 I concede that those items were not taken into consideration in our report when I said that the total moneys that the Wrigley Company had invested in the Doublemint business, come back to them within sixty or ninety days, I will say that what we meant by coming back in sixty or ninety days was that Wrigley collected his selling price within that period under his terms of sale. We meant nothing other than that.

(3036) On page 21 of Touche Exhibit 1, in my handwriting, there is a sentence reading as follows:

"The amount of interest accruing to the Larson Company on profits on Doublemint is calculated to December 1, 1920, only and will therefore be required to be recalculated down to the time final settlement of the accounting is made."

2976 On page 20 of Larson Exhibit 132 I make the following statement:

"We have made no calculation of the amount, but when the amount of profits on Doublemint have been adjudi-

cated and the rate of interest determined, the amount of interest will be easily ascertained."

The original statement in my original longhand report, Touche Exhibit No. 1 for identification, that I had calculated the amount of interest accruing to the Larson Company on profits to December 31, 1920, was true. The statement just made of what appears on page 20 of Larson Exhibit 132 simply means we have included in this report, Larson Exhibit 132, no calculation with reference to the interest and profits. That is, interest accruing to Larson on profits and interest accruing to Wrigley on capital.

2977 In the original longhand report written by me I made the statement that I prepared a table that showed the interest that would be payable to Larson on the profits made by Wrigley down to December 31, 1920. As I explained, that was a rough calculation that we made. All we meant by the statement just quoted from page 20 of the filed report, Exhibit 132, was that we make no calculation in this report on that subject. The reason we omitted from the filed statement a reference to our having made the calculation of interest on Wrigley's profits is (3037) not only because the calculation I had made was only a rough calculation, but also we include the calculation of interest that was not included in this filed report; that's the reason we make the statement that we did not calculate the interest.

2978 Following the statement that has last been read into the record from my original draft, Touche Exhibit 1, appears:

"This statement is attached hereto marked 'Exhibit N' and shows after allowing the Wrigley Company interest on capital employed an amount due Larson & Company as follows:"

Having read that, I still say that the calculation made at the time or before I wrote my first draft was only a rough calculation. We did not attach it to the report filed with the master for the reason only that it was a rough calculation; we left the matter of interest for the decision of the master. That calculation may be in the papers I have here. I have not seen it in about a year's time.

As to whether it is a fact that originally I prepared that statement with the expectation of filing it with the master

and that that statement showed how much interest the Wrigley Company would be entitled to, assuming that its investment in the Doublemint business was only for a period of 90 days, and that, on the other hand, I deducted from the interest allowable to the Wrigley Company and calculated in the manner stated, interest on what I thought were the profits earned by the Wrigley
2979 Company, I will say the statement was made at my suggestion, and then it was decided that we would not make any claim for interest in the report until the master had made a decision. My original thought, perhaps, was to
(3038) make an exhibit with the calculation of that interest, and then it was subsequently decided not to make any calculation of interest until the master decided the legal phase of it. With respect to interest which the Wrigley Company is entitled to for investment in the Doublemint gum, as I recollect it, this statement includes both sides of interest calculated on the basis which was stated there, a return of ninety days. The statement was not filed with the master because we decided we would not file it until the master rendered a decision as to when the in-
2980 terest should accrue. As to why we did not file so much of the calculation as showed how much interest the Wrigley Company was entitled to for its investment, I will say there was no use to file one side and leave the other side out. My entire purpose and intention was, in my report, so far as it had reference to the subject of allowing Wrigley & Company interest on its investment, not to express any opinion one way or the other, but to let the master determine it as a question of law.

I have before me sheet 25 of my original longhand report, marked "Touche Exhibit No. 1 for identification." That is page 25 marked with a numbering machine, at the
2981 time copies were taken of the working papers filed with the master. When I wrote out my original longhand report I numbered the pages in pencil.

The sheet I have before me contains no number 25 in my handwriting, but merely the stenciled number "25". That sheet is not the original number 25. I do not know when that sheet was prepared. It is all written in lead
(3039) pencil. All that is on it purports to be erased in the sense of having lines drawn through. It also appears there were some pencil changes made in the document as it was originally written.

(Said sheet numbered at the upper left hand corner "25", commencing with the word "and we respectfully venture the suggestion", etc., was marked for identification "Touche Exhibit 23".)

I am the author of that part of the Touche, Niven & Company report, under the heading "Conclusion", Larson Exhibit 132, filed with the master. I do not know when I first conceived the thoughts contained under that heading. It was after I wrote out my first report in longhand, for the reason I went away on a vacation before I finished up my report, and that was done after I returned from my vacation. I cannot say whether the only part of the first longhand report which I prepared after my vacation was that part which is contained under the heading "Conclusion". My mind is a blank on that subject. I went on my vacation December, 1920, sometime between the 10th and the 15th. I was gone until after New Years.

I can tell from Touche Exhibit 22 how much time I personally put in on this matter in December, 1920. I devoted no time after the 11th of December, 1920, to this matter. I commenced again to work on this matter January 3, 1921. I also did some work on this matter in February, 1921. Prior to the 11th of December I prepared most of what is contained in Touche Exhibit No. 1 (3040) for identification, but as to whether all of that was prepared prior to that time, I am unable to say. There was no conclusion in that original longhand draft at all.

I had not finished. I don't want to be understood that I prepared the entire report before I went on my vacation, excepting the conclusion, and it took me all the time in January which I have indicated to prepare the conclusion. I spent 73 hours in January on the Wrigley-Larson case, according to the time sheets. I would not say that all that time was devoted to this report. That time was devoted either to the report proper or to the statements accompanying the report. I haven't any independent recollection as to whether, after I returned from my vacation, I prepared any part of that longhand report except, it is my recollection, the conclusion was written afterwards, and possibly some part of the body.

2988 Wednesday, February 8, 1922, 10:30 A. M.

W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer:

There were no reports prepared in connection with the Wrigley accounting that were not prepared by me personally. The report written by me in longhand in
2989 December, 1920, and January, 1921, marked Touche Exhibit No. 1, and the typewritten copy thereof marked Touche Exhibit No. 2 for identification are the only two drafts of the report filed with the master that I know anything about. If there had been other drafts or reports by or on behalf of Touche, Niven & Company of the Wrigley account, I would have knowledge of it. My working sheets stenciled 841, 842, 843, 844, 845 and 846 (3041) are in Mr. Hagberg's handwriting. His name is John. I do not know what his middle initial is.
2990 As to what were the circumstances under which he wrote those pages, I will say they are simply notations with reference to the working sheets. I do not know when they were made. I presume shortly after the working sheets were finished or immediately after. I haven't any knowledge on the subject. Mr. Hagberg's part of the work with respect to the Wrigley matter was principally the advertising. I gave him his instructions. Mr. Whitworth also probably did. So far as I know, he carried out those instructions. We regarded him as a com-
2991 petent man. I do not know how long he has been with Touche, Niven & Company. He was there before I came. According to our time sheets, he commenced to work on this matter on June 14th. Mr. Hagberg worked the num-
2992 ber of hours and on the dates in July and August and September and October and November and December, 1920, and January and October, 1921, that are shown on Touche Exhibit No. 22. He spent more time in connection with this Wrigley matter than any other individual. He spent 1121 hours of time. I devoted the next largest amount of time, 664 hours. Hagberg's work was not con-
2993 fined to the advertising. That was his principal job. These working sheets, numbered 841 to 846, both inclusive, were not written out by him necessarily in order to carry out the instructions he received from me or Mr. Whitworth or both. That's our method of procedure.

We make notations with reference to each one of the principal schedules. Those sheets, 841 to 846, inclusive, were not prepared by him for the purpose of being made a part
(3042) of the Touche Niven & Company report.

(Mr. Mayer then asked the witness whether in his opinion those sheets had no relation to any report, either in existence or intended to be prepared. Mr. Aldrich objected to the question as argumentative. The objection was overruled.)

Those sheets were not prepared for the purpose of the report. They were simply prepared as notes to the working papers.

(Mr. Mayer offered the said working sheets, 841 to 846, inclusive, in evidence. They were received in evidence and marked Touche Exhibits 24-A to -F inclusive.)

Said Touche Exhibit 24-A contains, among other items, the following:

2994B "General

"The object in this accounting has been to verify the amount charged to Doublemint advertising by Wm. Wrigley Jr. Co. We are informed that the company in making their accounting did not use the books but invoices on file. Our procedure was therefore to reconcile the company's figures with those on the books. We met with many difficulties in this respect because invoices used by the company in one period were in many instances entered on the books in the succeeding period. All invoices, with a few exceptions where they could not be located, were examined. We also endeavored to eliminate any duplication which the method used by the company was unavoidable."

2994E Said Touche Exhibit 24-D contains, among other items, the following:

"Detail Men Advertising

"The schedules Detail Men Advertising shows the total amount of expenditures for this class as shown by the Detail Men Account in the General Ledger and what proportion thereof the company has charged to Doublemint. Although the company names this account Detail Men Account the terms salesmen and detail men are used in the same. The expenditures in this account

2994F are for the salaries and expenses of these men. It is debatable whether this expense should be charged to Doublemint on the ratio of sales instead of being treated as strictly advertising and distributed as done by the company and shown on our schedule. The former method would reduce the charge against Doublemint considerably. The company's version of this account is that the placing of advertising material with present and prospective customers is the primary duty of these men and that selling is secondary."

(3043) Said Touche Exhibit 24-F says that Touche Niven
2994G & Company took the manufacturing cost of Donated Gum as shown in the report of Marwick, Mitchell, Peat & Co. and took, in addition thereto, the cost of postage at 6c per box, being the amount of postage on donated gum charged by the Wrigley Company to advertising account; and said exhibit also shows the following:

"War Tax Rebate Certificates.

"The amounts of gum used as shown in our schedule are from the report of Marwick, Mitchell, Peat & Co. and six cents per box for postage charged to advertising account."

2995A The witness continued:—Each of these sheets has stenciled on the top the words "Wm. Wrigley Jr. Company". The first sheet, 841, is entirely in Mr. Hagberg's handwriting, with the exception of the heading already referred to and the notation "Touche Exhibit 24-A". There is nothing on the second page of this Exhibit except the Wrigley name on the top and the identification mark by the stenographer, and the stencil number at the top of the page. The stencil numbers on the top of the pages of said Exhibit were put on within the last few months. The working sheets, 841 to 846, both inclusive,
2995-B are written in ink. They are all in Mr. Hagberg's handwriting, except that on page 845 under the heading "Sample campaign" the following appears in lead pencil:
(3044) "See wkg. papers for each year". I believe that means to see the working papers for each year. The handwriting of those words is not mine. I believe they are in Mr. Hagberg's handwriting.

On page 844, under the heading "Advertising matter" is the sentence:

"In instances where the design is given would it be

possible to verify the correctness of these charges, otherwise not."

There is a pencil mark in that sentence, which means to transpose the words "would it" so as to have "it" precede the word "would". I do not know who put that
2996 pencil mark there so as to make that correction. I may have done it, and Hagberg may have done it. I saw these sheets, 841 to 846. I don't know whether Mr. Whitworth did or not. I saw them before I wrote out my longhand draft marked Touche Exhibit No. 1. As to whether I remember about how long it was when I saw those sheets, 841 to 846, before I wrote out in longhand my first report marked Touche Exhibit No. 1, I will say I used the notes and notations simultaneously. Some of the notations probably appear in the final report; if I approved them, they may appear there with minor changes.

There is nothing on those sheets, 841 to 846 to indicate whether I did or did not approve them.

During a momentary suspension just now I noticed I wrote on Touche Exhibit 22 in lead pencil the initials of Mr. Whitworth and myself, and Mr. Mayer wrote the word "John" over Hagberg's name. Hagberg has some middle initial which I don't remember.

(3045) On the back of sheet 841 there is some pencil figures indicating some divisions. It looks like my writing. I cannot tell when they were made, and I don't know whether they refer to the advertising or something else. As a matter of fact, I have no recollection about them at all. They may have some bearing on the contents of the sheets 841 to 846. I do not know one way or the other. I don't recall who was present when I gave Mr. Hagberg his instructions with respect to the advertising.

(3046) We gave Hagberg his first instructions when he com-
2998 menced to work, but I was present most of the time or saw him frequently and he would receive instructions from time to time as the work progressed. I would not say that he prepared Touche Exhibit 24 after he had finished his examination of the records of the Wm. Wrigley Jr. Company. It was probably after he finished the advertising portion of what he was doing. Mr. Hagberg assisted me from time to time as I needed him. The advertising was his biggest job. Excepting eight hours spent by Mr. Whitworth and two hours put in by a man

2999 named Weir, Mr. Hagberg and myself are the only two persons in connection with Touche, Niven & Company that did any work in this matter in the month of December, 1920. With the exception of four hours put in by Mr. Whitworth, nobody but Hagberg and myself did any work in the Wrigley matter in January, 1921. Mr. Whitworth and myself were the ones that actually participated in arriving at the conclusions that appear in my first original longhand draft, Touche Exhibit No. 1. We also talked the matter over with Mr. Hagberg with reference to his portion of the work.

3000 (Mr. Mayer then asked the witness whether there were any differences of opinion between himself and Mr. Whitworth on any of the theories involved in the account. Mr. Aldrich objected. The Master sustained the objection, stating that he assumed that Mr. Whitworth was the man who was responsible for the opinions expressed in the report, because he was the manager and the man apparently who dictated the report.)

3002 I did not have any instructions from Mr. Whitworth as to what theories should obtain in this case. We dis-
(3047) cussed the accounts as we went along, and I might say
3003 we developed the theories as we went along from the facts; that is, Mr. Whitworth and myself.

When Mr. Hagberg was given this work to do I told him what the object of the accounting was. I think I told him, as is stated on Sheet 841 of Touche Exhibit 24-A, that the object of this accounting has been to verify the amount charged to Doublemint advertising by Wm. Wrigley Jr. Company.

Sheet 842, under the heading "Bill Posting," says:

"Our schedules of bill posting advertising show the amount expended for the printing and lithographing of each design and also the month such expenditure was made."

That's the first sentence of that paragraph. I never filed any such schedule with the Master. I have such a schedule before me covering October, November and De-
3004 cember, 1914. I did not myself make any examination of the Wrigley Company's shipping sheets for the purpose of seeing whether those posters were actually shipped to their destination. I have no knowledge whether or not such an examination was made by anybody else of my company.

I did not myself examine the bills of lading for the purpose of seeing whether those posters were actually shipped to the places where they were to be posted. I don't know whether such an examination was made by any one on behalf of my company.

I did not examine any letter files or correspondence for the purpose of seeing whether or not those posters were shown to have been put in place. I don't know whether such an examination was made by anybody on behalf of my company.

3005 As to whether or not the Wm. Wrigley Jr. Company were in the habit of sending out men from time to time throughout the country, and in all places where they were supposed to have bill posting and wall painting and ad-
(3048) vertisements, for the purpose of seeing whether or not they were actually in place, I will say I understood that the detail men have more or less to do with the placing of the advertising. I would not be positive of that, though, but that's my recollection.

As to whether I am claiming that there are any charges made in the Wrigley accounting or deductions in that accounting on account of advertising that are fictitious or excessive, I will say I think they are excessive. What I mean is that there are excessive deductions based on fair apportionment. I am not, however, complaining of their figures, the accuracy of their figures, as to what they actually paid out for advertising.

3006 As to whether I am satisfied that no moneys are claimed by the Wrigley Company in their filed accounting to have been disbursed on account of advertising which were not, in fact, disbursed for that purpose, I will say I don't recollect any.

3007 The item of interest on capital enters into the Double-
mint accounting and that was not disbursed. There is a
3008 reserve in the Wrigley statement for unredeemed United Profit Sharing coupons. That appears as a reserve. There is no pretense that it was moneys actually disbursed.

As to whether it is my understanding that the Wm.
3009 Wrigley Jr. Company are claiming before Master Morrison that the amount of interest on invested capital that they deducted was an amount which they actually paid out to anybody, I will say the claim is not made as to payment with respect to any one of the items that I know of.

Speaking generally, I know that the Wm. Wrigley Jr. Company have filed an account with the Master in which they purport to show how much money they took in from
(3049) the sale of Doublemint gum, and I know that in the accounts which they have filed before the Master they make certain deductions from those receipts. Those deductions purport to be on account of the manufacturing cost, overhead, advertising, trade discounts, printing United Profit Sharing coupons, payment for the coupons, interest on capital and on patents, depreciation on patents, contingent liability for unredeemed United Profit Sharing coupons, and Federal taxes. I don't know that
3010 wherever they made a deduction on account of a supposed contingent liability they so stated in words on the account as filed; that is, that it was a reserve for contingent liability.

3011

February 8, 1922.
2 o'clock, P. M.

Since adjournment I have glanced over the accounts which the Wrigley Company has filed in this case before the Master. As to whether in those filed accounts the Wrigley Company deducted from the amounts received from the sale of Doublemint gum certain amounts that they claimed in those reports were on account of contingent liabilities for unredeemed Doublemint U. P. S. coupons, I will say they don't deduct them as Doublemint U. P. S. coupons.

The last item on page 1 of the account as filed reads:
3012 "Proportionate contingent liability for unredeemed Doublemint U. P. S. coupons based on Doublemint packages shipped as compared with total number of packages shipped bearing U. P. S. coupons."

The amount set opposite the language just quoted is $44,022.23. The sheet from which I have just read purports to be the profit and loss statement of Wrigley's Doublemint from July 28, 1914 to December 31, 1914,
(3050) both dates inclusive. That item of $44,022.23 does not indicate that the Wrigley Company are claiming that they actually paid out that amount.

(The Master then said the Wrigley filed report does
3013 not say that any of the items referred to therein were actually paid out.)

3014 The statement filed by the Wrigley Company itself shows overhead based on proportion of Doublemint sales to all sales and does not purport to show that those overhead expenses were paid out or not paid out.

I, as an auditor, understand the difference between debits and credits. When I examined this report that the Wrigley Company filed I found this item:

"Overhead based on proportion of Doublemint sales to all sales 16.1927% of $456,697.59."

That did not necessarily mean that the Wrigley Company claims that during the period shown on that sheet, namely, from July 28, 1914, to December 31, 1914, both inclusive, that they actually paid out for overhead $456,697.59. That item means the expense of overhead.

3015 It does not say they paid it out. In other words, there could properly have been put under that item amounts that do not represent moneys actually paid out. You can set up a liability for salaries and include it in expenses, and it would not necessarily be paid out on December 31st.

As to whether I would expect to find in that $456,697.59 anything on account of salary excepting the amounts paid out between the dates from July 28, 1914 to December 31, 1914, I would say I might. To give an illustration: It would not represent money actually paid out in that particular month.

As to whether the Wrigley Company's books were kept (3051) that way, I will say I don't remember whether the 3016 salaries were paid on the last of the month.

As to whether, taking the account filed with the Master as a whole, I mean to intimate that I find a single item in the Wrigley filed report which purports to represent moneys paid out which, in fact, were not paid out, I will say the items don't purport to say they were paid out. I examined the Wrigley Company's books. I don't know whether I found any such situation as I have assumed might have existed. I have testified that I took the accounts on the general ledger, such as salaries, and satisfied myself that they were correct. I also testified before the Master that I took other accounts on the ledger and satisfied myself they were correct. I don't pretend to say or intimate that the figures, the computations made by the Wrigley Company were in any way padded or fic-
3017 titious. I am not meaning to intimate anything of that

kind. Counsel was taking about payments. That is what I was answering.

On the first page of the Wrigley filed account is the heading "Proportion of Amount Paid for U. P. S. Coupons." That purports to indicate that the moneys were actually paid out by the Wrigley Company. I checked up that item and found that they actually paid out the amounts they claimed to have paid. In every instance where their accounts indicate or purport to show it was actually paid out, I found them to be correct. I don't know of any item that they said was paid out that I found was not paid out. I found no instance where they claimed moneys were paid out where they exaggerated the amounts.

3018 Under the heading "Bill Posting" on Sheet 842 of Touche Exhibit 24 appears the statement:

(3052) "The invoices do not state what design the services involved and what ratio should be charged to Doublemint can only in a way be obtained as reflected by the designs purchased at the time the services were rendered as set up in our schedule of bill posting."

I don't know that the examination with respect to the bill posting was limited to the invoices. We went to the invoices to support the entries in the books. An examination of the Wrigley Company's orders for the bill posters and of the Wrigley Company's contracts for the space to be filled by the posters in the street car advertisements might have thrown some light upon the subject. The Wrigley Company's shipping sheets and their bills of lading might have thrown some light upon the question of whether or not the bill posters and street car adver-

3019 tising were actually used, but there was no reference on the invoices for services rendered to the design which was supposed to have been put up.

I don't mean to say that, as an auditor employed to ascertain the correctness of a filed account, I limited my investigation to one paper and that when I didn't find the information on one paper that I didn't go to other documents that are ordinarily expected to contain the information.

If it is customary for people to advertise by bill boards there might be some contracts for the renting of the bill boards and some contracts for the purchasing of the bill posters, and there might be some contracts for the use of space in street cars and contracts or orders for adver-

tisements to be placed therein. I would ordinarily expect to find them. I imagine that where there was advertising by means of bill posting through the country, there would be correspondence on that subject. I might also
3020 expect to find some shipping sheets or shipping invoices
(3053) with regard to the shipments of documents of that kind; that is, bill posters and advertisements for the street cars, but that would not prove that those particular cards were covered by these invoices for services.

3021 As to whether, in the ordinary course of business, invoices for space to be used on bill posters or in street cars would show what posters or street car cards were actually used, I will say no, not ordinarily.

3022 Other records of the Wm. Wrigley Jr. Company that were examined with respect to advertising, other than invoices, were Mr. Stanley's working sheets, and I think I would include some of the photographs or cuts. Hagberg did most of them. I did not do that personally. I last saw Mr. Hagberg in the office last Saturday. He still works for Touche Niven & Company.

On page 7 of the account of Touche Niven & Company filed with the Master it is stated:

"Expenditures under bill posting for printing and lithographing could be allocated as between Doublemint and other brands more or less correctly from the invoices and other records of the company."

3023 So far as I have personal knowledge I don't know what were the other records of the company that were examined. As to why we singled out the invoices as containing no particulars on which to base an apportionment as between brands of gum, when, as I have stated, I would not ordinarily expect to find full information on invoices, I will say the invoices supported the payments and we went to the invoices to verify the payments. The invoices were the documents that we saw. I did not go to the other records.

3024 As to whether if I had ascertained what the designs were for which the invoices were made, I could have told whether or not a proper apportionment was made by the
(3054) Wrigley Company, I will say if the invoices showed the design, we could have verified it. If the invoices didn't show the design, there was nothing among the records of the Wrigley Company by which I could tell what the design was. I don't see how you could. So far

as I know, there was nothing on the invoices for services to show the design which was being put out.

I don't say now and I did not say it in the report, that there were not any other documents, records, inventories, bill posters, street car advertisements, orders, contracts, bills of lading, correspondence or anything else from which you could tell what the design was on account of which the invoices were made. I singled out the invoices
3025 in my filed report as being insufficient on which to tell whether the apportionment was proper or not because we were talking about invoices, and those are the documents that we inspected. That's the only reason I know of now.

The bill posting item, as included in the Wrigley Company's filed account was at least $453,270.60. As to whether I thought that my report to the Master as to what the invoices showed and what they did not show regarding the ability to apportion would be helpful to the
3026 Larson Company or helpful to the Wrigley Company. I will say I don't know whether I considered either one. I merely endeavored to point out the difficulties of the apportionment. I tried to make the report impartial. As to whether I didn't feel that I was employed by the Larson Company to point out weaknesses in the Wrigley account, I will say I would not let the matter of my employment affect my conclusions.

3027 The Wrigley Company deducted in the filed account on account of advertising Doublemint in street cars $625,-
(3055) 219.80. In my filed report I say that the invoices contain insufficient particulars to state whether that apportionment is right or not.

As to whether the investigation made by my concern which included me and everybody else that worked for Touche Niven & Company on these books was as limited with respect to the street car advertisements as it was with respect to the bill posting, I will say it was supposed to be as thorough on one branch of the advertising as it would be on the other. As far as I know, it was not any more thorough on the street car advertising than it was on the bill posting.

The Wrigley Company deducted $258,939.08 under the item of "Walls, Bulletin and Electric Sign Advertising." As far as the total amount expended by the Wrigley
3028 Company for that is concerned, I think we did verify it.

I doubt if we had taken sufficient time we could have verified the correctness of their apportionment, assuming that their method of apportionment was accurate. I am basing that on what we said in the report.

On Sheets 842 and 843 of Touche Exhibit 24, under the heading "Walls, Bulletin and Electric Sign Advertising," there appears the following:

"The company maintains a card system of this class of advertising. The cards show the location and size of each sign and whether Spearmint, Doublemint or any other brand is advertised, and in what proportion. It also gives the rental cost, cost of painting and repainting and date when done."

I examined some of the cards, and I believe that to be a true statement. Said sheet 842 continues as follows:

"The company in its accounting has taken the amount chargeable to Doublemint by states (as shown by our schedule) but does not show how much was expended on each of the other brands. In other words, they have not reconciled with the entire amount expended. If this had been done the amount charged to Doublemint, would,
(3056) to some extent, have been verified. The large number
3029 of signs, continual changes of design, cancellation of contracts lack of references on the cards and the unsatisfactory condition of the same make a verification involve more labor than we at present feel justified in expending thereon. We have therefore taken the company's figures for this class of advertising."

Those were the notes that were made by the man that did the work on advertising, and I have no reason to doubt their truthfulness. I don't question any of Mr. Hagberg's notes or reports.

I find something in that report to indicate that if sufficient time had been taken I could not have verified Wrigley's apportionment. The cancellation of the contracts, as I understand it, did not show the dates that the contracts were cancelled. Mr. Hagberg, on Sheet 842, doesn't say the cancellation of contracts or the mem-
3030 orandum on them are such as to render it impossible to verify Wrigley's apportionment. He says that it requires more labor "than we at present feel justified in expending thereon." As to whether, in my opinion, it was because a reconciliation was not made, that therefore I could not establish the amount properly charge-

able to Doublemint advertising, I will say if a reconcilia-
3031 tion had been made it would have aided this materially. As to whether that would have been the only effect of the reconciliation, that is, to save time, I will say it would show that the total agreed with the books. As to whether the ability to verify the Wrigley apportionment was absolutely dependent upon the reconciliation, or whether the reconciliation was merely a matter that would have made it convenient to verify the apportionment, I will say I don't remember at the present time just the condition of those records, but it was my impression that owing to changes in the cancellation of the contracts and other data on the cards, that it was impractical to build up the
(3057) accounts from the cards. As I remember it, I don't believe it could be done. I don't believe I would have been able to do it.

As to whether I mean to intimate by anything that I have said that the changes or cancellations that appear on any of these cards were out of the ordinary course of business, I will say if they had showed the date of cancellation, it would have probably been all right. As I
3032 recollect it, they did not show the dates. They simply crossed out the original records on the cards. I am basing my conclusion upon my recollection that the cancellations did not show the dates. I don't know whether these cancellations or changes on these cards were out of the ordinary course of business or not. I don't mean to intimate they were fraudulently changed or that the changes were made to conceal what the Wrigley Company was doing. It was probably done in the ordinary course of business. I made no attempt to find out the dates affecting the cancellations. I don't know that any such investigation was made by anybody on behalf of Touche Niven & Company.

I have the schedule that is referred to under the head-
ing "Walls, Bulletin and Electric Sign Advertising," on
3033 Sheet 842 of Touche Exhibit 42. The schedule is a schedule marked "874". That schedule is not my work. It is Mr. Hagberg's. I don't know in whose handwriting the pencil words are up on top of that sheet "as per Co."

According to Mr. Hagberg's notations, he did not check up on the accuracy of Wrigley's working sheets. In the notation he says: "We have therefore taken the company's figures for this class of advertising." That is

(3058) on Sheet 843. As to whether the Wrigley Company's working sheets were examined and checked over sufficiently to satisfy me that they were correct so that I was justified in following their figures and their amounts,
3034 eliminating their allocations, I would say I don't remember any differences in totals.

From Touche Exhibit 24, Sheet 843, it appears under the heading "Miscellaneous Advertising" that a schedule was prepared of miscellaneous advertising showing the total amounts applicable to Doublemint. I have such a schedule here. It is marked Miscellaneous Advertising. It is marked "Schedule E" and consists of two sheets marked 880 and 881. Both sheets are in Mr. Hagberg's
3035 handwriting. None of it is mine. The pencil notations on Sheet 881 are in Mr. Hagberg's handwriting. There is nothing in my handwriting on either sheet. On Sheet 881 there appears in pencil "A Company has 79 cents less." I assume that is the Wrigley Company.

On the same sheet in pencil and on the line underneath appears the following: "B", ditto marks for "company", ditto marks for "has" "Total 100.00 to much or D/m 55.55 to much." That looks like Mr. Hagberg's handwriting. A is the first item and B is the second. The word "company" refers to Wrigley and the "A" is a reference to the amount. Marks are opposite certain figures.

3036 (Mr. Mayer offered said sheets in evidence, sheet 880 being marked "Page 1" and sheet 881 being marked "Page 2". Said sheets were received in evidence and marked "Touche Exhibits 25-A and B," respectively.)

(3059) Said Touche Exhibit 25-A shows, among other items, the following:

3037

1914	Total	Charged to Doublemint
Book matches 1915	$ 4,241.70	$ 4,241.70
Book matches 1916	25,292.99	25,292.99
3038 Book matches	27,282.17	27,282.17

(3060) Referring to Touche Exhibit 24, Sheet 843, under the
3040 heading "Miscellaneous Advertising," I do not know of my own knowledge what investigation was made by any of our people. I personally did not make any such investigation. I don't remember what we said in the re-

port with regard to that item. I don't know of my own personal knowledge whether samples of the book matches referred to in the filed report were asked for.

I don't know whether any of our people examined any of the Wrigley Company's correspondence to ascertain the facts pertaining to this so-called "Miscellaneous Advertising." I did not personally. This subject of miscellaneous advertising is treated in our filed report at page 8 under "Paragraph (5)."

The next item in Touche Exhibit 24 is headed "Advertising matter," and appears on sheet 844. That indicates
3041 that we prepared schedules of advertising matter. Those
3042 show the total amount of items in any way applicable to Doublemint, and what proportion thereof has been charged to that brand.

Sheet 844 goes on to say:

"In instances where the design is given it would be possible to verify the correctness of these charges, otherwise not. We have used the same ratio of charges against Doublemint as the company."

I produced those schedules which are referred to in that sheet under the heading "Advertising Matter." Those schedules have not been filed with the Master as part of Larson Exhibit 132.

I did not spend much time in the detail connected with examining the Wrigley Company books and records pertaining to advertising. By that I mean I myself did not
3043 go to many of the Wrigley Company's books or records
(3061) pertaining to advertising data.

I am not able to state what the aggregate in dollars would be of the items of advertising on the Wrigley books or records that I personally examined or checked over. As a matter of fact, I did very little of the actual checking of the advertising. I handled the general ledger and I understand the controlling account for advertising was contained in the general ledger. I used the general ledger frequently. Eliminating the general ledger, I cannot give any idea as to the extent in dollars of the advertising items that I myself investigated. The total amount of the Wrigley Company's advertising during the account-
3044 ing period amounted to six million six hundred thousand dollars, according to Exhibit 132, including detail men, advertising, etc. It is not marked in that exhibit, but it follows overhead. Eliminating the general ledger, I

did not myself make any personal examination of more than a very small or insignificant part of that $6,600,000 advertising account.

As to whether I want to be understood as expressing an opinion to the Master based on my own investigation, that it would be impossible to determine from all the books and records and invoices and contracts and orders and shipping documents and correspondence and inventories and other matters, to apportion the major part of the advertising expenses as between Doublemint
3045 and the other brands, I will say I am unable to say whether or not you could connect up those invoices for services satisfactorily with the other records. The reason I say that is because I did not do it personally. I am basing my statement that an apportionment of the major part of the advertising expenses as between Doublemint and the other brands was impossible from the records
(3062) on Hagberg's notations and his reports to me.

I presume that Mr. Whitworth would know still less about the books and records of the Wrigley Company than I personally do. He did not handle any of the details.

On working sheet 846, being part of Touche Exhibit 24, there is a reference to "Our schedule of donated gum" and under a head note on the same sheet "War tax rebate certificates." There is also a reference there to the amount of gum used "As shown by our schedule." Those schedules were not filed with Master Morrison as
3046 a part of Larson Exhibit 132. Those papers are, however, in the custody of the Master.

Under the head note "Donated Gum" Mr. Hagberg says:

"In our schedule of 'Donated Gum' we have taken the manufacturing cost of the gum as shown in the report of Marwick, Mitchell, Peat & Co."

I know nothing about the use of the Marwick, Mitchell, Peat & Company report by Mr. Hagberg except what he says here. I don't know what authority he has to use that report. We had a copy of it and we used it wherever we could. I placed that copy in his hands with instructions to use it wherever it would expedite the work. I may have told him that Marwick, Mitchell, Peat & Company had been employed by the Master without

3047 that firm having been suggested to him by any of the counsel. I don't remember.

On the same working sheet, under the heading "War Tax Rebate Certificates," Mr. Hagberg says:

"The amounts of gum used as shown in our schedule are from the report of Marwick, Mitchell, Peat & Company and six cents per box for postage charged to advertising account."

I don't know whether Mr. Hagberg checked up on the Marwick, Mitchell, Peat & Company report as to those (3063) items, or whether he assumed them to be correct without making any change. The only purpose of that was to get the number of boxes on which six cents postage was charged. It was relatively a very small item and he possibly did not verify the item himself. I think the item of donated gum was comparatively a very small item.

According to a summary on page 5 of the report, the donated gum amounted to $12,508.35 and the war tax rebate certificates $97,183.23. Mr. Hagberg's memorandum or note with reference to the use of Marwick, 3048 Mitchell, Peat & Company's report was that he took from their report the manufacturing cost of gum, a part of the report which we did not investigate. I would not call a $97,000 item a small item.

Touche Exhibit 7 for identification was produced here yesterday. It has four sheets and each sheet has been numbered. It is entitled, "Memorandum for Mr. Whitworth." I testified that I did not recollect the date that was prepared, but there is a date on page 3 that indicates it was prepared about May 14, 1920. I prepared that memorandum after I had seen the Wrigley Company's filed accounts. I would not say I had studied it 3049 because it was too soon after we commenced work. I mean that I had not examined it sufficiently so as to know in a general way its contents and the method by which it was prepared.

Page 2 of the memorandum states:

"'Advertising chargeable to Doublemint' approximately $2,800,000 for period) we understand this expense has been allocated as follows:

(a) Direct charges where possible.

(b) Ads, carrying imprint of 'Doublemin,' and 'Spearmint' have been divided 50-50.

(c) Ads, carrying imprint of 'Doublemint,' 'Spearmint' and 'Juicy Fruit' have been charged 1/3 to Doublemint."

(3064) As to where I got that information, I will say I knew
3050 in a general way about the allocation. I don't know where I got that information at the time I prepared that memorandum. I don't remember whether I got it from Mr. Aldrich or whether it was after we had a talk with Mr. Stanley about it. I don't know from whom I got that understanding or when or how I got it. That memorandum was prepared as a program of an audit. Paragraph 4 of that sheet refers to "Printing U. P. S. Coupons." It then says, "I do not know how these expenses were apportioned." The pronoun "I" refers to myself. There is a reference there to Mr. Aldrich, and
3051 it purports to state what his contention and position is with regard to allowing interest on invested capital. I got that from Mr. Aldrich himself. Before I prepared that memorandum Mr. Aldrich had also told me, in his opinion, the Wrigley Company had no right to deduct anything for Federal taxes.

As to whether Mr. Aldrich told me before I made those memoranda that in his opinion no interests should be allowed on invested capital, I will say the way the statements reads is:

"For that reason he contends that if Doublemint is chargeable with any interest on capital at all, the amount should be calculated on the capital actually employed and only for the time so employed."

I read this quotation for the purpose of getting into the record what is on this sheet. I didn't read the preceding sentence because it didn't relate to interest on capital except indirectly. The only recollection I have as to whether or not Mr. Aldrich had expressed definitely his opinion that no interest should be allowed on capital invested is what is contained in the paragraph I just quoted.

3053 In Touche Exhibit 7 I have a paragraph headed
(3065) "Program of Audit." The first two pages and the major part of the third page are typewritten, and the date on page 3 and the four lines beneath the date are all in lead pencil writing. The entire fourth page is in pencil writing.

(Mr. Mayer offered the document, consisting of four

sheets, theretofore marked for identification Touche Exhibit 7, sheets 1, 2, 3 and 4, in evidence. They were received in evidence.)

3054-3058 Touche Exhibit 7.

3059 In Touche Exhibit 7 I have the following sentence:

"Under our instructions, we are not to be concerned with cost of sales, but we should verify the items embraced in overhead. This verification should include an inspection of the general office pay rolls and scrutiny of large or unusual charges to expenses."

I verified the items embraced under overhead in the manner specified. I don't remember that we actually did inspect the general office payrolls. By "our instructions" I meant instructions which we received from the client.

3060 I believe I was personally present when those instructions were received. I don't know whether it was the first meeting or not. As I recollect, Mr. Wentworth, Mr. Aldrich and myself were present at the first meeting which I attended at which we received instructions. There was nobody there from the firm of Hoyt, Little & Company. There was nobody else present that I recall. I don't think Mr. Larson was there. Mr. Aldrich did not instruct us that we should verify the items embraced in overhead and at the verification should include an inspection of the general office payrolls and a scrutiny of large or unusual charges to expenses. Mr. Aldrich didn't attempt to tell us how to do the work. He wanted (3066) us to verify the items embraced in overhead.

3061 Under the heading "Pragram of Auduit" in Touche Exhibit 7 I stated:

"Advertising charges should be closely scrutinized and all large items vouched. If necessary, we should analyze the account for the entire period. All bills charged wholly to Doublemint or apportioned 50-50 should be particularly inquired into. If such invoices are supported by copies or descriptions of the advertising matter, we should not have much trouble in apportioning the expense."

As to whether I followed out those instructions I will say Mr. Hagberg did most of the detail work. In so far as I know, we followed the program very closely. I didn't personally have Mr. Aldrich's instructions on that subject. I had instructions already at that time from Mr. Aldrich that the name "Wrigley's" in the advertise-

ments had to do with good will, and he instructed me that the brands of gum were of secondary importance in the advertisements. I made a notation of that in the fol-
3062 lowing words on Exhibit 7, under the heading "Program of Audit":

"In this connection, we should bear in mind Mr. Aldrich's contention that the advertising matter displays prominently the name 'Wrigley' which he claims has to do with good will, and that the brands of gum are of secondary importance."

In the same exhibit I said:

"'Reserve for unredeemed U. P. S. Coupons' should be analyzed."

I also have in that memorandum the statement:

"We have agreed that we should vouch completely four months of each year included in the period."

As far as advertising was concerned, we did at least that, and I think more. With respect to U. P. S. Coupons, I think we vouched at least four months completely
(3067) each year during the accounting period. That was not part of what I had agreed with Mr. Aldrich I should do. Mr. Aldrich didn't have anything to do with the preparation of this memorandum. That was my own.

When I used the language "We have agreed that we should vouch completely four months of each year included in the period," I referred to the man to whom it was addressed, Mr. Whitworth. I meant that Whitworth and I had agreed between ourselves. I was telling Whitworth something he already knew. By the statement "We have agreed" I did not refer to an agreement or arrangement made with Mr. Aldrich.

In that memorandum I said:

"We would like the advice of the New York partners as to the propriety of charging interest on capital. If interest should be included, what is the proper basis?
3064 Also, as to Federal taxes; f the latter is to be included at all, should not the apportionment be based on sales instead of the method used by the Company?"

By "we" I meant Mr. Whitworth and myself. I don't know that Mr. Whitworth had told me he would like the advice of the New York partners on those question. As to how I knew that Mr. Whitworth wanted that advice, I will say I used the word "we." I might just as well

have used "I." As to whether I meant the plural, Mr. Whitworth and myself or myself alone, I will say I meant both of us. As to how I knew he wanted that advice, I will say presumably I had discussed with him the propriety of charging interest on capital in the income taxes before I prepared this Exhibit 7. As to why it
3065 was necessary for me to remind him of something that had already been discussed between us, I will say this memorandum was prepared for him to take along with him on a trip to New York which he took about this time. He happened to be going to New York and he
(3068) desired to talk about the Wrigley accounting matters with his partners; I presume all of the Wrigley accounting.

As to why I limited it to the two items, viz., the question of charging interest on capital and Federal taxes if he wanted to discuss the matters, I will say we wanted to know how they would regard an inclusion of those items in the accounting. The memorandum was made to
3066 give him a general idea of what we had to do, and I also included in that a paragraph with reference to seeking advice from the New York partners as to interest on capital and taxes.

As a matter of fact, the object in preparing this memorandum was not for the New York partners but for Mr. Whitworth and myself as an outline of the work we proposed to do. At the time I prepared this Touche Exhibit 7 Mr. Whitworth and myself had agreed upon the questions of allowing interest on capital and deducting Federal taxes.

The New York partners whose advice was wanted at
3067 that time were John B. Niven and H. S. Freeman. They are both living in New York. Touche Niven & Company is a partnership. Mr. Freeman is not a member of the firm at the present time. He lives in New York. He is with the National Cloak & Suit Company. Mr. Niven is still with our concern and is living in New York
3068 or in Jersey. His business offices are in New York.

The date "5/14/20" is written in lead pencil on page 3 of Touche Exhibit 7. Then I wrote the following there: "Mr. A. made computation of total advertising about 10 million. See if correct."

The Mr. A. referred to in that notation is Mr. Aldrich.

That would indicate that I had a conference with Mr. Aldrich on the 14th of May, 1920, or prior. I don't want
(3069) it to be believed that Touche Exhibit 7, all of which is in typewriting, was prepared no earlier than May 14, 1920. I said it was prepared between the time that we commenced the work, which I think was May 10th, and probably this date of May 14th. It is not a fact that prior to May 14, 1920, I prepared that part of Touche
3069 Exhibit 7 which precedes the date "5/14/20" and that on May 14, 1920 I had another interview with Mr. Aldrich pertaining to this Wrigley accounting, and that on that date I made the memorandum that appears under that date. That date in pencil of 5/14/20 may have been put on there the date that the typewritten sheets were prepared. And I may have inserted what follows a subsequent date. That pencil date may have been put on there at the time the typewritten sheets were made, and what follows may have been written subsequently. I say I don't know the date that that paper was pre-
3070 pared. I have no means of ascertaining when the typewritten part of Touche Exhibit No. 7 was prepared. As to whether it is my belief that it was prepared prior to the 14th of May, 1920, I will say the only thing to give any indication of the date is that pencil date of May 14th and that indicates to me that it was prepared either on the 14th or prior to the 14th of May. I don't know whether the typewritten part and the pencil writing were prepared at the same time. There is nothing further I want to say as to the time when I prepared Touche Exhibit 7.

3071

February 9, 1922,
10:30 o'clock A. M.

CHARLES RUPERT WHITWORTH, a witness called on behalf of L. P. Larson Jr. Company, being first duly sworn, testified on direct examination by Mr. Aldrich.

My name is Charles Rupert Whitworth. I live at
(3070) Glencoe, Illinois. I am a member of the firm of Touche Niven & Company. The senior member of the firm is Sir George Touche, residing in London. Other
3072 members are John B. Niven, 42 Broadway, New York; Andrew W. Tait, London, England; Henry E. Mendes, 42 Broadway, New York; Francis J. Clowes, 42 Broadway, New York; Victor H. Stempf, St. Louis; and myself.

The firm of Touche, Niven & Company have offices in New York, Cleveland, Chicago, St. Louis and Minneapolis. We also have affiliated offices in Montreal, Toronto, Winnipeg, Calgary and Vancouver, Canada, and in London and South America. I cannot give you all the offices in South America, but the arrangement now is that George A. Touche & Company are now affiliated with Price-Waterhouse and W. B. Peat. That is the Peat that used to be with Marwick, Mitchell & Peat. I can get a
3073 full record of the offices in South America if you want it. We have offices in Buenos Aires and several other cities. The head office is in Buenos Aires.

The business of this partnership and these affiliated companies is that of public accountants. I have been in the accounting business for twenty-one years; first in England for six years and in the United States for fifteen years. I was educated in England. I was educated at Wellingborough Grammar
3074 School in England and after passing the senior Cambridge examinations I went to London and was articled in the profession for a certified accountant, the custom there being that you must receive training in a chartered accountant's office for the period of five years during which time you are required to take three examinations, and if you are successful in passing all those three examinations, you receive the degree of
(3071) chartered accountant. I received that degree and

came to America shortly afterwards, within a year of receiving the degree, and have been in practice here for fifteen years. I am a certified public accountant and a member of the American Institute of Accountants, a member of the Illinois Society of Certified Public Accountants, of which I have been president and am now the vice president.

I think the firm of Touche Niven & Company was first employed to make an examination of the books and accounts of the Wm. Wrigley Jr. Company in the month of May, 1920. We entered upon our work, to the best
3075 of my knowledge and belief, within a few days after such employment and the authorization by the Master for my firm to examine the books.

I received the instructions from the court and immediately imparted my instructions or those instructions to Mr. Vincent who has charge of the office in my absence, and it was known then that I was about to leave for England, and so I gave him the instructions to carry on the work during my absence. We had several conferences and I told him in a general way how the investigation should proceed and what it was to cover. Of course, that was after reading the decree, a copy of which was handed to me, I am not sure whether it was by yourself or whether it was direct from the Court.

By "Court" I mean the Master. By decree, I have in mind the decree entered by Judge Carpenter on Oc-
3076 tober 14, 1918, ordering the accounting for the profits of Doublemint.

3077 On my return from England in September, 1920, one of the first things that I did was to get in touch with Mr. Vincent and see the progress of this work and also pay visits to the office and go into some matters; that is, I
(3072) should say to the office of Wrigley & Company and go into the matters which they desired to discuss with me, and generally to supervise the work that was required by this accounting. Finally the report was drafted by Mr. Vincent and submitted to me for approval and for my signature and responsibility.

I had occasion in connection with this work to make an examination of the different working papers of the employes of Touche Niven & Company. In fact, I saw all of the working sheets for the various times.

(Mr. Aldrich asked the witness for his opinion as to

whether Mr. Vincent was an expert accountant. Mr. Mayer objected. The objection was overruled.)

3078 Mr. Vincent has had a great many years experience in the public accounting profession. He is a man that has had a good record to his standing and has been considered an accountant of the highest standing among other firms besides ourselves. We have the highest opinion of Mr. Vincent's ability.

(Mr. Mayer moved to strike out the part of the answer as to the reputation and standing of Mr. Vincent among others, and all the part of the answer which was not an expression of the witness' opinion as to Mr. Vincent's ability, on the ground that it is not responsive to the question and incompetent evidence. The motion was denied.)

I might add that Mr. Vincent is a certified public accountant, which speaks for itself.

To the best of my knowledge and belief, the report of Touche Niven & Company filed in this hearing, in this (3073) court, in this cause, is a true and correct account.

(Mr. Aldrich then asked the witness as to what he knew as to the character and training and ability of Mr. Hagberg. Mr. Mayer objected, and the objection 3079 was overruled.)

Mr. Hagberg has been in our employ I think for five years. Personally I have the highest opinion of his work. He has always shown himself to be thorough and reliable and I have no reason whatsoever to think anything but the highest as to his ability and as to the character of his work.

I am referring to Mr. Hagberg's work generally on all occasions, including the work in the Wrigley matter.

There were different men engaged on this work at different times. I can name most of them. As I recall it, with Mr. Vincent were associated Mr. Hagberg and Mr. 3080 F. M. Brandt. Mr. Brandt, shortly after my leaving for England, I believe left the service of Touche Niven.

Then J. P. Martin was engaged on the work for some time. I would have to refer specifically to our time sheets to tell you them all. Mr. Theobald was also on there. It is a difficult thing to remember who were the employes.

Then there was J. H. Burk, Gavin Weir, G. S. Mc-3081 Laughlin, R. E. Jaynes and J. D. Van Slyke. All but

Brandt, Burk and McLaughlin are still in our employment. They didn't do very much work. They were working, I think, employed more or less in the office in going over some exhibits.

(Mr. Aldrich then asked whether all these men were competent accountants, in the judgment of Mr. Whitworth. Mr. Mayer objected, and the objection was overruled. The witness answered Yes.)

3074 My instructions were solely to Mr. Vincent, and he would in turn give instructions to the men who were
3082 working with him. I might have given some supplementary instructions when I was in the office, but it was generally through him that I gave any instructions as to the carrying on of the work. I informed Mr. Vincent of the general character of the investigation, what was the purpose of the audit and what we were expected to ascertain. I expect there was a program or summary of the work prepared as I then understood, by Mr. Vincent which was submitted to me as a memorandum. It
3083 is our practice in all the engagements to make a program and to decide upon the procedure which we expect to carry out. In some cases it is necessary to modify this program as we find necessary as the work progresses.

Touche Exhibit No. 7 apparently is the summary that was prepared in the present case. Evidently it was prepared by Mr. Vincent, as he would be the only one that would have any authority to prepare such a program. It is always necessary in every case to submit a program to me and for my approval finally. I approved of that program.

3084 As to the 73 hours which are charged on the time sheets for my services, I will say there was more time actually put in by myself which was not charged directly to the account. The practice is this, that generally some one will come in every day and in this particular case Mr. Vincent used to come in and discuss the procedure sometimes for half an hour and sometimes longer, but if it was anything less than an hour, there would be no time charged. In the same manner I read a considerable amount of the report and also the testimony in this case at home for which I made no charge. It was out of
(3075) office hours, and unless it is of considerable im-

portance, I don't charge if I take work home. There was, of course, as I say, several conferences which might take sometimes less than an hour, and they were going on daily, for which I would make no direct charge, but that was the time for which Larson & Company actually paid me.

3085 *Cross-Examination by Mr. Mayer.*

As to whether I am familiar with the working sheets and with the work which was done by Mr. Vincent and Mr. Hagberg in connection with the Touche Niven & Company report filed with the Master as Larson Exhibit 132, I will say I examined some of the working sheets. I have given a good character to Mr. Hagberg. I believe I stated that he is a man of great ability and that his work is dependable, including that done in this case.

As to whether I have examined the work he did in this case sufficiently so that I am willing to include it in the work which I say he is competent to do, I will say I
3086 saw it at one time. I have not looked at it more recently.

I have stated to the Master that I regard Mr. Vincent as a competent auditor. I gave a good reputation to Vincent and Hagberg. I examined Mr. Vincent's work in this case so that at one time I knew what it was; that is, before I signed this report. So far as I know, the same thing is true as to the work that Mr. Hagberg did in this case. As to whether I found no mistakes or errors in any of the work that Mr. Vincent did or Mr. Hagberg did in connection with this Wrigley matter, I will say not so far as I made any inquiries into it. I was familiar with what these two men did before I signed this report that was filed with the Master. As to whether I disapprove of anything that either of those
(3076) two men did, I will say I can't answer that ques-
3087 tion. I am not of the opinion that possibly Mr. Vincent did some work in this Wrigley accounting that I thought was inaccurate. I am not at this moment of the opinion that Mr. Hagberg did some work in connection with this Wrigley accounting that I disapproved of or didn't agree with. I cannot remember of any thime before I signed the report, Larson Exhibit 132, that I disapproved of anything that Mr. Vincent did in connection with this

accounting. To the best of my recollection, I in fact, approved of everything that he did.

I think the same thing is true with reference to Mr. Hagberg's work. I have a high regard for both of these men and for their opinion, and for their opinions as auditors. I have had no occasion whatsoever to observe anything on the part of either of those men that caused me to think he was not competent.

3089 From time to time I was kept advised by Mr. Vincent as to what he was doing and as to what Mr. Hagberg was doing and what these other employes of our were doing in connection with the preparation of the Wrigley accounting. As to whether I found any errors or mistakes or anything on the part of the work of any of them, so far as I now remember I will say I did not find any inaccuracies in their work. As to whether "by their
3090 work" I mean either in the work of Mr. Vincent, Mr. Brandt, Mr. Hagberg or any of the persons employed by Touche Niven & Company, I will say the inaccuracies would probably be left with Mr. Vincent to a great extent.

Mr. Vincent never reported anything to me to indicate that Mr. Hagberg was not competent or that he had made any mistakes in this case or any errors, either by way of figures or by way of opinions.

(3077) I am not prepared to say that I had approved, before I filed our account with the Master, Larson Exhibit 132, of all the work that Mr. Vincent did in connection with this matter. I have approved the report and that
3091 is as far as I will say. There were no reports he made to me that I disapproved of. I have approved that report and that is my answer.

As to whether any reports made to me by either Mr. Vincent or Mr. Hagberg or anybody else in connection with this Wrigley matter were disapproved of by me, I will say I can't answer that question. I would not say no positively, although to the best of my knowledge and belief I don't remember of anything that I disapproved of. You will understand that I am the one that finally decides as to what is going to be done in the reports. My decision was necessarily based upon work that was done by Mr. Vincent, Mr. Hagberg and these other employes, and their conclusions and their results were submitted

to me, I examined them, I approved of them, and for that reason I signed Larson Exhibit 132.

3092 No other members of my firm had anything to do with the preparation of the report filed with the Master as Larson Exhibit 132. I signed that report, and that was as a responsible partner for Touche, Niven & Company.

3093 I was the only member of the firm who had anything to do with the preparation of the report, and I considered myself competent to sign this report and file it with the Master as the expression of the opinion of my firm.

I did not take that responsibility without consulting with other members of my firm before filing the report.

(3078) I discussed certain features of the report with other members of the firm. Those members were Mr. Niven

3094 and Mr. Freeman. I have no recollection as to whether I discussed these matters with my partners other than Mr. Freeman and Mr. Niven. I think my conferences with my partners were generally orally either in New York or in Chicago. I don't know whether sometimes they would be in writing.

(Mr. Mayer then asked the witness to produce all writings that had passed between his firm members or any-one on behalf of his firm in any way relating to the ex-

3095 amination of the Wrigley Company's books or the report that was made by said firm. Mr. Aldrich objected, and the Master sustained the objection.)

3096 I think generally that all instructions that were given in this Wrigley matter through any member of my firm to any employes were given by me through Mr. Vincent. Mr. Vincent, of course, would have the authority to give instructions also that he thought proper that I

3097 might not have mentioned to him. But generally the conduct of the case came through me. Whatever was done by these different persons named on Touche Exhibit 22 in connection with the work and the preparation of the work was pursuant to either my instructions or Mr. Vincent's instructions.

3098 As to whether it is a fact that some of my partners disagreed with some of the conclusions contained in Larson Exhibit 132, I will say that I can't answer that question because I don't know that that is so. I don't know whether it is a fact that before I filed Exhibit 132 some of my partners advised me that they entertained opinions contrary to those that are now contained in Larson Ex-

hibit 132 and that those partners never, so far as I know, changed the opinions which they so expressed to me.

(3079) I am unable to state whether I received communica-
3099 tions in writing from some of my partners before I filed
3100 Larson Exhibit 132, which contained opinions contrary to those contained in said exhibit, and which opinions my partners never recalled or altered. I don't think any of my partners at the time I filed exhibit 132 disagreed
3101 with some of the conclusions therein expressed. I don't know of any communications from some members of my firm prior to the filing of that report with the master, in which they expressed opinions to the contrary of those expressed in the filed report. I would in all probability have known of such contrary opinions, if any, before I filed the report. There are matters in accountancy as
3102 to which honorable, competent accountants disagree. Practically on every principle some one might have a different opinion. Accounting is business knowledge and different accountants might have a different opinion on different matters. I suppose there might be a difference of opinion among honorable and honest accountants, for instance, on the matter of allowing interest on invested capital where you are trying to find out what the profits are of the merchant during a specified time in a case where that merchant is to account for those profits to a third party. It would not surprise me if there was such a disagreement. Possibly such accountants might disagree on the question of the contingent liability for issuing trading stamps or coupons that were outstanding and unredeemed and as to how much should be allowed
3103 for a proper, reasonable, fair reserve. That question is an accounting question. It has been so in this case. If
3104 five such accountants were given the full facts with re-
3105 gard to the experience of a certain firm issuing coupons and were asked to write down the proper percentage for the fixing or determining of the reserve contingent lia-
3106 bility, I suppose at least three would agree as to the proper percentage to write down. I say that because I
(3080) could pick five and I think three would agree. I will
3107 put it this way. Suppose I was to go to the American Institute or to their membership—I think I would know at least three that would agree. When I said that I

3108 thought three would agree on the figures, I had in mind, more or less, I could pick three accountants who would each write down the same figure. If the five accountants, suppose, were selected by a disinterested master in chancery, I think three of them would arrive at the same conclusion. (Mr. Mayer then said that he wasn't asking about figures. He was asking about the percentages these auditors would write down. Mr. Aldrich objected. The witness said he couldn't answer that question, and the master said he would sustain an objection to the question, as in the master's opinion it was all a
3109 matter of guess, to which the witness added, "I told you I could guess and that's all there is to it".) I absolutely think that the question of how much should be set aside for a contingent liability on account of the
3110 Wm. Wrigley Jr. Company's outstanding U. P. S. Coupons is a question of accounting. I have in the report certain conclusions with regard to the Wrigley Company's advertising. As to what, in drawing my conclusions, I assumed the method was under which the Wrigley Company made its allocation of advertising in its account filed with the master. I will say I don't think we assumed anything. There are certain bases on which they are allocated. I think the basis is mentioned in the report. I cannot tell without reading the report what it it. I know there were differences, different ways and different classes of advertising.

Referring to page 5 to 11 and part of page 12 of our filed report, I will say that the Wrigley Company attempted to
3111 apportion the advertising to different classes of sales. The apportionment was not, in my opinion, in accordance with the terms of the decree of Judge Carpenter which referred this case to Master Morrison and directed him (3081) to take an accounting of profits. I have studied the
3111 decree. I am not a lawyer. I never heard of the de-
3112 cree until Mr. Aldrich drew my attention to it. I don't think Mr. Aldrich, who was the first person to draw my attention to that decree, told me that under that decree it was the duty of the Wm. Wrigley Jr. Company, in the account which it would file, to deduct for overhead, advertising and other proper expenses, items proportioned to the sales of Doublemint to all other brands. It is my interpretation of the decree that by it the Wrigley Com-

pany was ordered to account for the moneys received by it from the sale of Doublemint gum as contra-dis-
3113 tinguished from the other brands of gum, and that it make proportionate deductions for overhead, advertising and other proper expenses. My interpretation of the decree is that it requires the Wm. Wrigley Jr. Company to allocate the moneys paid out for advertising on the basis of the relative sales of Doublemint gum as compared with other gum, and because of that interpretation I have reached the conclusions set out in our filed
3114 report. I was no influenced in anything contained in the filed report by anything that Mr. Aldrich wanted me to put in the report, excepting to the extent I have indicated in the report itself. Whenever I was following Mr. Aldrich's views, I so stated in the filed report.

In our report I disallowed the Wrigley Company deductions on account of income and excess profits taxes and for interest on capital invested. My position is that interest on capital invested is not money paid out. My position is that I am bound by the decree referring the
3115 case to the master and that it does not permit the Wrigley Company to deduct anything unless it is for moneys paid out or accrued. If I had been preparing that account, regardless of instructions from the court, (Mr.
(3082) Mayer then asked the witness to answer the question
3116 which was then pending, namely "So you would not have reached the conclusion contained in your filed report if you had not interpreted the decree of reference as forbidding the Wrigley Company from making deductions except for moneys actually paid out or accrued during the accounting period?" The following then occurred:

The Witness: I would like to have that typed out.

Mr. Mayer: No, that is not the way we try a law suit.

A. Then I won't answer the question.

The Master: It may be typed and after recess you can answer it.

I would not have allowed interest to be deducted as an expense.

3117 I have before me Touche Exhibit 7, the memorandum
(3083) which was prepared of the different instructions and
3117 things to be done by my firm in this Wrigley accounting investigation. Mr. Vincent prepared it. I cannot answer

whether I was present at the time it was prepared or
3118 the time when it was prepared. I expect I read the memorandum, Touche Exhibit 7, about the time it was prepared. I can't say whether I approved it. I suppose generally I approved it. That was a memorandum.
3119 I can't answer whether I did or did not approve of that memorandum, because I am not familiar with all of the contents of the memorandum now. It doesn't make any difference now whether I read it over or not. This memorandum was for my information. It is not a question of approval or disapproval. It was a mere memorandum. On page 2 of that exhibit is a heading entitled "Programme of Audit." I approved of that programme. That was a part of my instructions. Page 3 of the exhibit states "We have agreed that we should vouch completely four months of each year included in the report." The "we" refers to Mr. Vincent and myself. The agree-
3120 ment was between Mr. Vincent and myself. All that memorandum means is that Mr. Vincent and myself had agreed among ourselves that we should vouch completely four months of each year included in the period. I can't now answer whether that was actually done, because I would have to ask Mr. Vincent first. I expect it was. Page 3 of the same exhibit states: "We would like the advice of the New York partners as to the propriety of charging interest on capital. If interest should be included, what is the proper basis? Also, as to Federal taxes: if the latter is to be included at all, should not the apportionment be based on sales instead of the method used by the company?" I raised that question for the first time. The pronoun "we" refers to Mr. Vincent and myself. Whether he raised it or I raised it, I raised it, I do not know.

(3084) Mr. Vincent and I wanted the views of the New York
3121 partners as to the propriety of charging interest on capital because there was some question in our minds as to that. As to whether Mr. Vincent and I had some question in our minds at the time that the memorandum was prepared as to what interest should or should not be deducted on capital invested, I will say we had some question as to the propriety of that charge in there. As to
3122 why I wanted the advice of my New York partners as to what the proper basis would be for charging interest,

if it was to be included, I will say one question would be at what rate interest should be charged. There may have been other questions. Just now, what was in our minds I can't tell you. I do not know of anything else having been in my mind or Mr. Vincent's mind so far as he expressed his mind. As to whether I meant by that memorandum as to what would be the correct rate of interest to be allowed if interest should be properly allowed at all, I will say that was one thing, and what would be the amount of capital, that is, whether or not it would include—or what would be the basis of arriving at the invested capital, put it that way. I cannot say as to whether there was any question between Mr. Vincent and myself as to what items should be included as invested capital and what items should not be. I don't remember as to that. I don't remem-
3123 ber why I wanted the advice of the New York office as to federal taxes. As to what was in my mind when I said in that connection that if federal taxes are to be included at all, the question would be whether the apportionment should be based on sales instead of using the method adopted by the Wm. Wrigley Jr. Company
(3085) in its filed account, I will say I don't remember that item now. The reason for the preparation of Touche Exhibit 7 was in a general way so as to preserve in writing the general program of the audit that we were to make and such memoranda as we wished to preserve to refresh our recollection. There may have been other questions of debate between Mr. Vincent and myself when I prepared Touche Exhibit 7 besides those indicated thereon and as to which I wanted the advice of
3124 my New York partners. I don't know whether there were or not. As to whether, if there had been, I know of any reason why I would not then have preserved a memorandum of them, I will say there might have been some other things arose before the preparation of the memorandum. My intention when that memorandum, Exhibit 7, was prepared, was to preserve a memorandum of all the different points on which I and Mr. Vincent then thought we would like to get the advice of the New
3126 York partners. I got the advice from the New York partners as to which my memorandum, Touche Exhibit 7, said I desired. I don't know that I can produce it.

The matter was discussed orally, I think, both in Chicago and New York. That is the recollection that I have of the matter. The discussions, I think, were with Mr. Niven and Mr. Freeman and myself, and at one occasion in Chicago when Mr. Vincent was there. Mr. Vincent was not in New York. I cannot state without further reference to our working papers whether I got any written reply to those questions from my New York partners.
3127 Touche Exhibit 9 is a memorandum received from one of my partners in New York. I do not know when, and I don't know from what partner. I saw it about the time
(3085) it was received in Chicago. I can give no idea when it was received. Touche Exhibit 9 was sent to Chicago by my New York partners in response to some questions I discussed with them in New York. It was sent in re-
3128 sponse to an oral conversation as far as I remember. I do not think it is in reply to anything in writing. One of the head notes on Touche Exhibit 9 is "interest on capital invested." That document, under that heading, contains the following:

"The instructions of the master do not apparently contemplate a charge for this item, since it is not, strictly speaking, an 'expense' of the business. At the same time it would appear to be a proper charge at a reasonable percentage. The figures used, viz., seven per cent, is not reasonable for this purpose. A rate of four and one-half per cent would appear to be more equitable, since the purpose is not to give the Wrigley Company any profit on the use of this capital."

I think it was Mr. Freeman who was of the opinion that interest should be allowed on capital invested, but that the rate should not be more than four and one-half per cent. There were only two of them I had much dis-
3129 cussion with. It was Freeman and Niven, and I discussed more with Freeman, that is, perhaps on the whole, than Niven. I should also add that I might have also asked various questions of the other partners, but I think in general the discussion was mostly with Freeman and Niven. I can't remember whether I gave my partners in New York, Mr. Freeman or Mr. Niven or both, any intimation as to what the instructions of the master were. It is possible and conceivable that we might even have sent a copy of the

decree, I would not say positively that we did, you understand.

(3086) The master referred to was the present master. I am
3130 not sure that what I told them was my interpretation of what the master had instructed. They may have interpreted the same thing by reading the decree. I don't know that I told them. I would not say I told them that those were the master's instructions. I don't know whether I received that memorandum, Touche Exhibit 9, about the time that the report, Larson Exhibit 132, was being prepared. I cannot answer as to whether such instructions as are contained in Touche Exhibit 9 were ever recalled or altered. The instructions were not recalled. I cannot say whether they may have been amended.
3131 Touche Exhibit 9 is not an instruction. It is merely a memorandum for our guidance. I don't know whether any of the opinions set out in Touche Exhibit 9 were ever changed by the author thereof. So far as I know none of the opinions expressed in that memorandum, or Touche Exhibit 9, have ever been altered by the author or others thereof. I have before me the head-note "advertising" in Touche Exhibit 9. Under that note the author of Touche Exhibit 9 says:
3132 "Advertising. I have somewhat changed my views with regard to the advertising charge if the form of advertising now being followed is at all similar to that which was done during the period of the infringement. The present advertising undoubtedly lays particular stress upon the name 'Wrigley' and the individual products are given very little space. I should regard this as a dangerous argument to use in a suit, but I assume that there is no danger in using it in connection with the accounting."

I think Mr. Freeman said that. I do not know what he meant to say by the words:

"I should regard this as a dangerous argument to use in a suit, but I assume that there is no danger in using it in connection with the accounting."

(3087) I cannot remember what the views of the author of Exhibit 9 were before he changed them. The author of Exhibit 9 talks about the form of advertising "now be-
3133 ing followed." I cannot state what period of time he was referring to. I have before me a document marked

Exhibit 4 for identification consisting of six typewritten sheets and two typewritten Exhibits dated Chicago, November 9, 1920, entitled "Memorandum for Mr. Whitworth." I think Mr. Vincent prepared it. Its purpose was to submit his views to me. I think I took Touche Exhibit 4 down to New York personally. I was going
3134 down on some other business at that time, and I thought it would be a good occasion to discuss it. My present recollection is that sometime on or after November 9, 1920, I took down to New York for use in conference with one or more of my New York partners the document marked Touche Exhibit 4. I expect I discussed with some one or more of my New York partners after No-
vember 9, 1920, the various subjects contained in Touche
3135 Exhibit 4. I think Touche Exhibit 9 is the reply which I received from my New York partners, to the memorandum dated November 9, 1920, and marked Touche Exhibit 4 for identification. I think the author of Touche Exhibit 9 is Mr. Freeman, although it may have been
3136 the joint product of Mr. Niven and Mr. Freeman. When I was in New York discussing these matters with my partners, they knew that there was a suit pending here and that there was also an accounting proceeding. In Touche Exhibit 9 under "advertising", my partners, after saying there had been a change in the writers' views and referring to the then present method of laying stress on the name "Wrigley's" say:

(3088) "The most important deduction which it would seem to me could be drawn from this argument would be that the instruction of the master to make 'proportionate deductions for overhead, advertising and other expenses' is to be construed literally and that Doublemint should only bear such a proportion of the advertising as its sales were of the grand total sales of the company. This method would do away with all questions of arbitrary apportionment and would apparently result in a very substantial saving to our client. It would also, if this were the case, represent a substantial recognition of the fact that the greater part of the advertising is of Wrigley products as a whole and not of any individual item."

3137 I cannot share the opinion contained in what has just been read from Touche Exhibit 9. I am not prepared to answer whether I shared that opinion without think-

ing it over considerably. I can give my opinion as to the proper rule to apply on the question of allocating the advertising expenses in the case now on hearing. I con-
3138 cur in the opinion of the writer of Touche Exhibit 9 that because of the form of the decree directing that proportionate deductions for over-head, advertising and other proper expenses be made, that therefore the expenses of advertising should be allocated on the basis of Doublemint sales to all sales.

3139 The author of Touche Exhibit 9, under the heading "interest on capital invested" states "it would appear to be a proper charge at a reasonable percentage." I do not agree with that opinion. I cannot answer the question as to whether on the subject of "interest on capital invested" the report as filed by Touche, Niven & Company with the master, Larson Exhibit 132, is the unanimous opinion of the members of the firm of Touche, Niven & Company. I cannot because I signed that report, and they didn't. The report as written is signed by one of the members of Touche, Niven & Company, and the
(3089) firm accepts the responsibility for his actions. I mean as between myself and my partners, my partners are willing to be responsible for what I sign the firm name to.

3140 Larson Exhibit 132 is now before me. I signed the signature in handwriting reading "Touche, Niven & Company" appearing on page 21. Between myself and my partners, they are willing to be responsible for what I sign. As between me and the court or the master, all I mean by Exhibit 132 is that it is an expression of the personal opinion of myself.

I am 38 years old. I cannot answer that that is the expression of all the partners. We have seven or eight partners. They don't see every report that goes out of
3141 the office. As to whether at least one of my partners to whom the report was submitted disagreed with that report as filed, at least to the extent of the item of interest on capital invested, I will say the report was not submitted to Mr. Freeman. I mean the finished product as filed with the master.

Touche Exhibit 4, which I took to New York, contains on the subject of "Interest on capital invested in business," first a statement as to how the Wrigley Company

arrived at the amount of capital which they claim was invested. Second, the Percentages, which I said the Wrigley Company used in determining how much of the invested capital was attributable to Doublemint. Then, Touche Exhibit 4 contains under the head-note "Inter-
3142 est on capital invested," the following:
(3090) "Mr. Aldrich states that the evidence in the case shows that the gums were sold at the same price, through the same jobbers, and on the same terms, viz., two per cent ten days, thirty days net, and that no additional facilities were required for the Doublemint business. For that reason he contends that if Doublemint is chargeable with any interest on capital at all, the amount should be calculated on the capital actually employed and only for the time so employed. He stated that the tum sold in one month is collected the next and that the profits realized therefrom is put back into the business."

In reply to that subject, one of my New York partners said that he thought it was proper to charge interest at a reasonable percentage on the capital invested. Notwithstanding that opinion, I put in the report filed with the master as Exhibit 132 under the caption "Interest on capital invested," at page 17, the following:

"There is a fundamental principle generally accepted by the commercial world that interest is in effect an appropriation of profits and since the profits from Doublemint have been held to belong to the Larson Company, a deduction of a part of these profits is not permissible."
3144 As to whether I would have filed a different report from Exhibit 132 if it had not been for the interpretation of the decree, I would say it would depend entirely on the circumstances, the purposes of the report and everything else, as to what way the account would be made. As to whether I now say I interpreted Touche Exhibit 9 as not being the expression of an opinion on the part of its authors that making a charge for interest on capital invested at a reasonable percentage is proper, I will say I cannot answer that. I suppose the words in my partner's statement, Exhibit 9, that "it would appear
(3091) to be a proper charge at a reasonable percentage" convey to me that it was his opinion that it is proper as an accounting question to charge interest on capital invested.

I should say Mr. Niven is about 50 years old. I should say Mr. Freeman is about 40. Both these men are my seniors, and are more experienced accountants than I. My opinion, as to 1920, is that they were experienced ac-
3146 countants and entirely competent. At least as competent as Mr. Vincent and myself. They are both better than either of us. I said that whether or not I would have filed the same report as I did file before the master if it had not been for the interpretation of the decree would depend on circumstances. I do not know if I would have filed the same report as has been filed with the master if the circumstances in the present case had been identical with those which actually existed except
3147 there had been no decree shown me. We interpreted that decree and prepared the account accordingly. I understand what the circumstances are in the case in which I am testifying. I know the circumstances include, among others, the presence of a decree which was submitted to
3148 me. My conclusions, as they appear in this report, were influenced by the decree. I cannot admit that if it had not been for my interpretation of the decree I would not have filed this kind of a report. I cannot admit any difference either way. It would depend, as I said, entirely on the circumstances in connection with it, and I would have been guided accordingly. As to what type of circumstances would it be dependent upon that are not actually involved in the case here, I will say there might be several. I cannot name one right now. I should have to reflect. The decree makes it a different case to an ordinary accounting case. If I had never heard of the
(3092) case in which I am now testifying, and if Mr. Morrison
3150 had sent for me and had said to me, "Mr. Whitworth, I hand you the accounts that were filed by the Wm. Wrigley Jr. Company in a case on hearing with me, and I want you to examine them as an officer of the court with a view of seeing whether their computations are right, whether their deductions are right, whether their allocations are right, I am not even going to tell you who is going to pay you for your services, the court will see that you are paid, I am calling you in because I have confidence in your ability and integrity" and the master had further stated "the object of this is to find out what the profits were of the Wm. Wrigley Jr. Company

during the period from July 28, 1914, to November 12, 1918," I cannot state whether I would have filed a report containing the conclusions that Larson Exhibit 132 contained. I cannot answer because I don't know at this
3151 moment. There might be other information that I would want to find out from the master. I cannot now think of any. I think I am now getting for my services $60.00 a day. I think Mr. Vincent is getting $40.00. I cannot an-
3152 swer as to Mr. Hagberg's until I look at the office records. Nobody that I know of connected with my concern has gotten or is getting more than $60.00 a day in connection with this Wrigley matter. Our firm was not paid nor did it charge a retainer in this case. I cannot tell whether my New York partners donated their
3153 services in this matter without looking up the records. There is no reason why I should not charge for any time which I put in on this case in view of the arrangement that I was to be paid $60.00 a day. I call seven hours a day.

There were general discussions when I was in the office,
(3093) and I also did some work at home, just how much it
3154 was in all I can't figure, for which no charge was made. My office time was put down every day. I do not keep an accurate account as to whether I am in conference for one hour or an hour and twelve minutes. At the end of the day I make up the seven hours. I make no memorandum at the time as to just how much is put in on each matter. I can generally tell whether it is one or two hours. My intention is to keep a reasonably accurate account of my time and to be paid for the time. It might be that if my time sheet showed I put 73 hours on this matter, that there were times when I would charge for a full hour when it might be a little less, having in mind that there was some conference or some prior occasion
3155 for which I made no charge. I do not keep my time sheets always in that way. There were some times that were less than an hour for which I would not charge. If it were fifty minutes I might have charged it, it depended on the nature of the discussion. I have had experience in departmental accounting. In my filed report I disagreed with the method adopted by the Wrigley Company in the allocation of its advertising expenses.

As to what I understand the Wrigley method to have

been, I will say they attempted to make arbitrary apportionment to the various departments as to the amount of advertising consumed by each department, and when I say "department" I mean brands. As to whether my understanding was that they would take an advertisement and charge an arbitrary part of it to Doublemint,
3156 I will say it amounts to an arbitrary apportionment so far as we were concerned because there was no records by which we could prove the accuracy of it. That in-
(3094) formation I got from Mr. Vincent. I do not pretend to make that statement based upon my personal examination. It is my understanding in effect that the identical amounts charged by the Wrigley Company to Doublemint were arrived at arbitrarily. I understand there was a system adopted by the Wrigley Company in their allocation of the advertising expenses, but whether it could be called a correct system is another matter. I believe I know what that system was. There are different systems indicated in the report for different classes of advertising. As to whether I understand that the Wrigley Company used a different system in allocating its advertising, say, for bill posting, from what it did
3157 its advertising for street cars or newspapers or billboards, I will say there may have been. I would have to refer to the report to say definitely. I was informed at the time, and to the best of my recollection there was quite a difference between the allocation of the different classes of advertising. I think that when the Wrigley Company made deductions for advertising, they made a different allocation of the different types of advertising expenses. I am speaking entirely from memory, but I want to add this, that in any event whatever allocation they made, made no difference in the report because of the interpretation we took that they should be allocated on the basis of the ratio which Doublemint sales bore to the total of all sales, so that whatever allocation Wrigley made in the end would not be so important in the filed accounting. It is my opinion that they should have allocated on the ratio of sales because of the decree.
3158 As a matter of fact, we allocated on the basis of space in some cases. I cannot personally name a single case
(3095) in which the Wrigley Company did not allocate on the basis of space, but we can very soon get it from

3159 the records, I think. I do not understand that I have expressed any opinion in the report filed with the master, Larson Exhibit 132, as to what would be the proper way to allocate the Wrigley Company's advertising expenses if there were no decree in the case such as I have seen and interpreted. I had no intention of saying anything in the report filed with the master as to what my professional opinion would be as to the proper method of allocating the Wrigley expenses if there were no decree in the case.

(Discussion then arose as to whether the line of examination then being pursued by Mr. Mayer was proper.
3160 The following thereupon occurred)

Mr. Mayer: I understand that this witness has expressed no opinion as to what the proper method is from
3161 an accountant's point of view or otherwise of allocating the Wrigley Company's advertising expenses except that he had condemned the Wrigley Company's allocation solely because he interprets the decree as requiring an apportionment on the basis of Doublemint sales to all sales.

Mr. Aldrich: I accept that. We will so understand it.)

Working sheets 841 to 846, both inclusive, offered in evidence as Touche Exhibit 24, are in John S. Hagberg's handwriting. There is nothing in my handwriting. I read those sheets, from 841 to 846, before I signed the report that was filed here. I have a recollection of read
(3096) it over there at the time when the audit was going on.

On sheet 845 there is written "See wkg papers for each year." I do not know in whose handwriting those
3162 words are. They are in pencil. The ink writing is Hagberg's. I cannot answer yes or no as to whether the pencil words on 845 are in Vincent's handwriting. It does not look like his handwriting. It might be Hagberg's, but it does not seem as if that was the same writing. It is not mine, I am sure of that. I don't mean to indicate that there is anything on those six sheets, from 841 to 846, that I repudiate. I am just wondering who it was and how, whether there was anybody engaged on the report or on these figures that Mr. Hagberg made up and he said "Well, see working papers to get that," and he might have asked somebody else to put that on instead of doing it himself. Hagberg might have asked

someone to put those words "see working sheet" on page 845.

Touche Exhibit 3 for identification consists of five sheets. It is headed "Notes *re* conference with Mr. Aldrich 12/3/20". Mr. Vincent apparently made them. They are his writing although I also see that there is some of Mr. Hagberg's writing on there. The following is Hagberg's handwriting, "Show advertising as per method of Wrigley and also our way," and "Japan organization expense in overhead about 27,000," and "By instruction of counsel for Larson we have not figured salaries of Mr. Wrigley," and "Canadian dividends—Aldrich will write T. N. & Co. in re this item." Those notes shown on Exhibit 3 were drawn to my attention be-
3164 fore I filed my account with the master. By "our way" in the sentence from Touche Exhibit 3 just re-
(3097) ferred to, I meant the allocation based on Doublemint sales to all sales. I have it that's what Hagberg meant. Hagberg's writing on Exhibit 3, "Canadian dividends—Aldrich will write T. N. & Co. in re this item" meant that Charles H. Aldrich, the counsel here, will write my firm, Touche, Niven & Company, in regard to the Canadian dividends. Mr. Aldrich did not send me
3165 such a letter, to my knowledge.

In Touche Exhibit 9 appears a paragraph headed "Income and Excess Profits Taxes." Reading over that paragraph I don't know at this time, at least I have forgotten if I ever did know, just what it refers to. On the same document there is a heading "Brooklyn moving expense." It says "This also would appear not to be chargeable to Doublemint upon the facts stated in the memorandum." The memorandum referred to is the same one which I said I thought I took to New York, and which is dated November 9, 1920, and is marked Touche Exhibit 4 for identification.

3166 Touche Exhibit 4 for identification is a document entitled "Memorandum for Mr. Whitworth. It was prepared by Mr. Vincent, apparently, for me.

(Touche Exhibit 3 for identification was offered in evidence by Mr. Mayer. It was received in evidence and marked (Admitted.)

3172 (Mr. Mayer then offered in evidence said Touche Exhibit 4 consisting of eight typewritten pages dated Chicago, November 9, 1920, entitled "Memorandum for Mr.

Whitworth." The said Exhibit was received in evidence and marked "Admitted".)

(3098) Said exhibit contains among other matter the follow-
3173 ing:—

to "The amount of sales and the cost of sales have been
3184 agreed upon by Mr. Aldrich. • • •Advertising Advertising expense charged to Doublemint during the period amounted to $2,794,651.76 as compared with total advertising expenses of $7,041,234.11, or 39.69%. As a result of our verification of these expenses, the amount charged to Doublemint should be reduced by the sum of approximately $43,000.00, which is due to clerical errors in calculations."

(Mr. Mayer then offered in evidence Touche Exhibit 9 for identification consisting of three typewritten pages headed "Memorandum Wrigley vs. Larson". The document was offered, was received in evidence as Touche Exhibit 9 and marked "Admitted". Said exhibit contained among other matter the following:

3186 "Advertising: I have somewhat changed my views with regard to the advertising charge if the form of advertising now being followed is at all similar to that which was done during the period of infringement. The present advertising undoubtedly lays particular stress upon the name "Wrigley" and the individual products are given very little space. I should regard this as a dangerous argument to use in a suit, but I assume there is no danger in using it in connection with the accounting. At the same time even this argument involves the conclusion that the intention of the Wrigley Company was to enable anything which they put out under their own name to command a ready sale, and that being so any article so marketed can be considered to receive the benefit of this advertising. The most important deduction which it would seem to me could be drawn from this argument would be that the instruction of the Master to make "proportionate deductions for overhead, advertising and other proper expenses" is to be construed literally and that Doublemint should only bear such a proportion of the advertising as its sales were of the grand total sales of the Company. This method would do away with all questions of arbitrary apportionment and would apparently result in a very substantial saving to our client. It would also, if this were the case, represent a

substantial recognition of the fact that the greater part of the advertising is of Wrigley products as a whole and
3190 not of any individual item. * * * Proportion of Depreciation of Patents and Patent Rights There similarly appears to be no justification for this charge. The Doublemint operations were carried on by Wrigley in violation of the rights of Larson and Larson should not be called upon to stand any part of the cost of patents or processes which Wrigley elected to use in connection with the manufacture of Doublemint.")

3191 The witness continued: I think I saw before I prepared Larson Exhibit 132 the document headed "Wm.
(3099) Wrigley Jr. Co. Notes on advertising 1915, chargeable to Doublemint", consisting of eleven typewritten pages. There is nothing in that document so far as I now remember that I disapproved.

(Mr. Mayer then offered the said document in evidence. It was received in evidence and marked Touche Exhibit
3192 26. Said exhibit says, among other matters:

"Car Cards: This item is one of the subdivisions made by the company in its analyses of the advertising account, a method also used by us. Our amounts in this subdivision agrees with that of the company and amounts to $311,315.71. * * *

"Our schedule of amount chargeable to Doublemint shows 161,488.72 after each design has been charged with the lithographing the proportion chargeable to D/M has been arrived at by an examination of the company's scrap book of design and the apparent or rather the % as indicated by the Advertising Manager Mr. Stanley has been used. * * *

3193 "All invoices were examined, except those of Gugler and Co. for the month of July. * * *

3194 "Bill Posting: This item is also a subdivision of Advertising Account which agrees with that of the company and amounts to $263,765.23. * * *

"In our schedule of amount chargeable to D/M we have shown the cost of lithographing separately and distributed same to the several designs as shown by the invoices and pro rated the amount for services and rentals to each design. * * *

3195 "All invoices except for the month of July (which were not available) were examined. * * *

3196 "Newspapers and Magazines: This item is also a sub-

division of the Advertising Account as made by the company and by us and which amount to $360,837.03 for Co.'s figure and to $360,937.03 by our figures.")

(3100) Friday, February 10, 1922. 10:30 o'clock A. M.

3203 W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer.

There is a notation on Touche Exhibit 7 reading as follows:

"Prepare P & L a/c showing in columnar form Doublemint business as compared with other business for entire period from July 28, 1914, to November 12, 1918. Tie this up with surplus at beginning and end of period, and also with federal tax return."

We tied up the surplus at the beginning and the end of the accounting period. As to the federal tax return, I don't think we inspected that. As to whether we prepared
3204 in columnar form or otherwise, a profit and loss account showing the Ddublemint business as compared with the Wrigley Company's other business for the entire accounting period, I will say what we did was to compare the Doublemint business with the total business. As to whether or not we prepared a profit and loss account as indicated in the quotation just made from Touche Exhibit 7, I will say only so far as compared with the total business. There is a specific part of the filed exhibit, 132, to which I can point and which I think is a profit and loss account showing the Doublemint business as com-
3205 pared with the other business for the accounting period.

Exhibit A-1 is for the period from July 20th to December 31, 1914. Exhibit A-2 is for the year 1915. I am referring now to the Exhibits.

Touche Exhibit 7 contains the following:

"Get particulars of manufacturing cost and overhead. Although manufacturing costs have been agreed upon, we should know the composition of such costs for its bearing on items in dispute such as interest, etc."

(3101) As to whether, as a matter of fact, we investigated the composition of the manufacturing costs and overhead, I will say we did of the overhead, but not of the manufacturing costs. We did not investigate the manufacturing cost. The manufacturing costs had been agreed

upon. I refer to manufacturing cost because Touche
3206 Exhibit 7 is simply a memorandum, and at that time I thought we were to look into the manufacturing cost casually, that is, in a general way, not with a view to making a detailed analysis. When Touche Exhibit 7 was prepared I had an understanding with Mr. Whitworth that an examination should be made of the manufacturing cost and over head or the composition there, in order to ascertain the bearing that it had on items in this dispute. I had no understanding with Mr. Whitworth regarding the analysis of the manufacturing cost. As to whether the entire document, Touche Exhibit 7 was prepared for the purpose of preserving the result of the conference that Mr. Whitworth had with me with respect to the general program of the audit to be made by my concern I will say some portions of it were for that purpose, and some portions were simply notes I made at the time. Overhead was one of the matters that Mr. Whitworth was consulted about. I don't know that we talked about the manufacturing costs at all. When I used the words in Exhibit 7 "items in dispute such as interest, etc." I mean the items under investigation. That would include the overhead, the advertising and the other expenses other than manufacturing costs. In the same exhibit I have a memorandum reading "Analyze advertising in a general way, also U. P. S coupon purchases." We analyzed the advertising. There were no U. P. S. purchases. That memorandum was probably written be-
(3102) fore I knew very much about the books. In Touche
3208 Exhibit 7 I have the following: "What is meant by contingent liability for unredeemed U. P. S." That meant U. P. S. coupons. At that time I knew something about United Profit Sharing coupons. I did not know then how those coupons were handled by the Wm. Wrigley Jr. Company. I wrote in that exhibit my opinion that if
3209 those charges in the Wrigley accounting for contingent liability for unredeemed coupons means that they are provisions for unredeemed coupons at the end of each period, that in that case they should all be eliminated except at the end of the period. As to the question whether I still think so, I cannot answer it specifically unless I can explain what I mean by contingent liability.
3210 In Exhibit 7, in my own handwriting, on or subsequent to May 14, 1920, I wrote the following:

"What is meant by contingent liability for unredeemed U. P. S. coupons? Ascertain how these coupons are handled. If the amounts mean what the phraseology conveys, viz. that they are provisions for unredeemed coupons at end of each period, then in that case they should all be eliminated except at the end of the period for obviously what was unredeemed at December 31, 1914, was either redeemed between that date and November 12, 1918, in which case the charge would be taken up in the usual course of business, or if not redeemed would be provided for at the end of the period. What redeemable value has these coupons?"

I then knew the meaning of what I then wrote. That expressed my opinion, but this memorandum was written probably before I even saw the books, and I had no knowledge of how the books were kept or how the accounts were kept, rather. I do not know that I have changed that
3211 opinion on the U. P. S. coupons. As I said a few minutes ago, this is simply a memorandum which I wrote before I knew anything about the accounts at all, and
(3103) everything contained in there was not necessarily followed. The purpose of writing Exhibit 7 was simply
3212 to have a memorandum, a rough draft of a program of procedure. I was also to preserve a memorandum of such opinions as I then had and which appear recorded on that Exhibit.

Touche Exhibit 3 is a document entitled "Notes re Conference with Mr. Aldrich 12/3/20." Those figures mean that the conference was on December 3, 1920. The first
3213 sentence on that Exhibit looks like "Staley total P 804, 842 & 843". The next line reads "Adver. $10,432,070.63". The next two lines read "Mr. Aldrich 1914 16.1927". I do not recollect what the figures 804, 842 and 843 refer to. They may refer to the pages of the testimony in the hearing now before the master. This memorandum would indicate that at that conference there was something said about the amount that the Wm. Wrigley Jr. Company had spent for all their advertising during the accounting period. I don't recollect now. The line which I have just read from Exhibit 3, "Mr. Aldrich 1914 16.1927" has a line drawn through it. I don't know
3214 whether I did that or not. I don't know what the stricken out words just quoted from that exhibit mean. The figure after "1914" viz., "16.1927" means that was the

ratio of Doublemint sales to all sales for that year. I am not sure about that. I don't know that if you use as a basis for determining the amount that should be deducted in the Wrigley accounting for advertising the proportion of the total advertising expenses indicated by the ratio of Doublemint sales to all sales, it will leave a very much smaller amount than if you deduct advertis-
(3104) ing expenses on the basis of the space used by the dif-
3215 ferent products advertised. As to what I meant in stating on page 2 of this report, I will say I know that the Wrigley Company's deductions for advertising expenses were not based upon the ratio of Doublemint sales to all sales, and I know I adopted that method. If the court should adopt an account based upon my method of calculation, then so far as the advertising item alone is concerned, it would make a difference in favor of Lar-
3216 son and against Wrigley of over $1,777,000.00.

3217 The method adopted by me in my report respecting advertising is more favorable to Larson than the method adopted by the Wrigley Company. I made a memorandum, Exhibit 3, "to show advertising as per method of Wrigley and also our way." By the words "our way" I meant the way we adopted in the report filed with the master. It appears in this memorandum that salaries of Mr. Wrigley show in text amount, so that if the court decides otherwise, the accounts may be adjusted accord-
3218 ingly, yes. I made that memorandum at the suggestion of Mr. Aldrich.

The next memorandum on Touche Exhibit 3 states "Canadian dividends: Aldrich will write T. N. & Co. in re this item". Mr. Aldrich did not write T. N. & Co. regarding this item. As to what was the subject matter of discussion on account of which I made that notation, I will say my recollection is that the dividends received on account of the stock held by the Wrigley Company in the Canadian Company was credited to interest account, and there was some talk about that item.

The next item on Touche Exhibit 3 looks like "See Western Glass vs. Spurd". It is not in my handwriting. It looks like Mr. Hagberg's. The next words are "Inter-
(3105) est on invested capital." The words "*Western Glass v. Spurud*", referred to a case in which the subject of interest on invested capital was discussed. As to whether that refers to the case of *Western Glass Company* v.

Schmertz in the 226 Federal Reporter at page 730, a decision by the Circuit Court of Appeals sitting here, I
3219 will say I do not know. I never read it. I do not know whether I was informed before I filed this report with the master that the Circuit Court of Appeals here had in the case just mentioned decided that an infringer is entitled to deduct profits made by the infringement for use of its capital, including plant, invested in the business to the extent of its actual employment in the infringing operations, and that for such allowance interest may be computed on the value thereof and apportioned for the share of infringing business whenever non-infringing business is carried on therewith and the share of each is ascertainable. Some mention must have been made of such a case or this reference would not have been made. I may have been informed in a general way respect to what the court had held on that subject. I
3220 don't remember. There must have been a reason for making that memorandum on Exhibit 3 referring to the Schmertz Glass Company case. As to whether I can think of any other reason for making this reference except to advise my institution, or someone connected with it, as to what had been decided by the court in that case, I will say no, simply took a memorandum of the conference. I don't know whether Mr. Hagberg advised himself as to what was decided in that case. I may have
3221 been told as to what was decided in that case. I do not recollect now. I have no recollection whatever on that subject. I have a memorandum on Touche Exhibit 3 reading as follows:

"A. H. Smith 3/17 $1500.00 include by take exception a/c of witness brot from Cala".

(3106) The word "by" was intended to be "but." I know that Mr. Aldrich instructed me to take exception to the deduction for A. H. Smith's payment of $1500.00 and we so stated in the report. The words "held in suspense by advice of counsel by plaintiff" appearing in Touche Exhibit 3 with respect to the Smith item, I think means that this Smith item was held in suspense by advice of
3222 Mr. Aldrich. Those memoranda on Exhibit 3 pertaining to A. H. Smith are all in handwriting.

In Touche Exhibit 1 for identification I wrote:

"In addition to the items disallowed as per exhibits B-1—B-4 are attorneys' fees paid and included in ex-

pense under the caption of overhead, a list of which we have furnished Mr. Aldrich. Included in this list is an amount of $1500 paid Albert H. Smith on March 14, 1917, who we understand was a witness brought from California to testify in the present case.

The inclusion in expenses of this and some of the other items Mr. Aldrich may object to.

Whatever the amount may be should be adjusted in
3223 the account submitted herewith."

I think I have now read everything that is in Touche Exhibit 1 that has any bearing on the Smith item. I was just reading from sheet 5 of Touche Exhibit No. 1. All I read was in my own handwriting. I don't know whether at the time I wrote Exhibit No. 1 I knew posi-
3224 tively whether Mr. Aldrich would or would not object to the Smith item. The notation that I made on December 3, 1920, on Exhibit 3 said: "Held in suspense by advice of counsel by plaintiff". On page 5 of the typewritten draft of the report I said the following pertaining to the Smith item.

(3107) "In addition to the items disallowed, as per exhibits B-1—B-4, are attorneys' fees paid and included in expense under the caption of overhead, a list of which has been furnished Mr. Aldrich. Included in this list is an amount of $1500 paid Albert H. Smith on March 14, 1917, who we understand was a witness brought from California to testify in the present case. The inclusion in expenses of this and some of the other items have been objected to by Mr. Aldrich. The amount of such expenses finally disallowed should be adjusted in the accounts submitted herewith."

What I have just read from the typewritten document is not as it was originally typed, but it was after it was
3225 corrected in pencil. The document as originally typed contained the following sentence: "The inclusion in expenses of this and some of the other items Mr. Aldrich may object to." Mr. Whitworth afterwards changed that sentence in pencil so as to read as follows: "The inclusion in expenses of this and some of the other items have been objected to by Mr. Aldrich." The typewritten draft which I have just read, Touche Exhibit 2 for identification was dated when it was prepared, "January ....., 1921". As to whether I know now that at least as late as January, 1921, I didn't know that Mr. Aldrich would

in fact object to the Smith item, I will say I did not know
3226 positively, no. I had no more knowledge than when I prepared Touche Exhibit 3, namely, the notes of my conference with Mr. Aldrich on the third of December, 1920, and I had no more knowledge when I prepared the typewritten copy of the report, Touche Exhibit 2, as to whether or not Mr. Aldrich would, in fact, object to the Smith item than I had when I wrote out in longhand the first draft of the report Touche Exhibit No. 1. My recollection is that I didn't know positively on either of the
(3108) three occasions, namely, when I made the notes of my conference with Mr. Aldrich on December 3, 1920, or when in December, 1920, and January, 1921, I prepared my first longhand draft of the report, or when in January, 1921, I prepared the first typewritten draft, as to whether Mr. Aldrich was going to or was not going to object to the Smith item.

3228 I have here the original working sheets pertaining to the subject covered by Touche Exhibit 26 for identification. I have before me the working papers on advertising for 1915. I have a sheet, it is before me, which has been stenciled "70". It is headed "William Wrigley, Jr. Co. Notes on Advertising 1915 chargeable to Doublemint." The first paragraph of that working sheet reads:

"Car Cards: This item is one of the subdivisions made by the company in its analyses of the advertising account, a method also used by us. Our amount in this subdivision agrees with that of the company and amounts to $311,315.71."

That sheet consists of notes made by Hagberg.

(Said working sheet No. 70 was offered in evidence by Mr. Mayer. It was received in evidence and marked Touche Exhibit 26-A).

3229 (Touche Exhibit 26-A.)

(It was agreed that the original sheets before the witness, of which Touche Exhibit 26-A was one, were the original sheets, of which Touche Exhibit 26 for identification, concerning which Mr. Whitworth had been examined on the day before, was a copy.)

(3109) Friday, February 10, 1922. 2:00 o'clock P. M.

3232 W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer.

Touche Exhibit 26-A, being working sheet No. 70, is in Mr. Hagberg's writing. I don't know what the pencil figures "3506347" at the bottom of that sheet mean. I do not know when that Exhibit 26-A was prepared by Mr. Hagberg. I haven't any idea at all on the subject. I presume it was at the time he finished up on this advertising. I have no way of determining within a month
3233 as to when Mr. Hagberg prepared this exhibit.

I have a sheet before me relating to bill posting. It is stenciled "84". It is entitled the same as working sheet 70. Mr. Hagberg prepared sheet 84. I don't know when. There is a pencil figure, "70795" on the bottom of that sheet. I don't know who write it. It looks like Mr. Hagberg's figures. I don't know what it means. The first sentence on that working sheet 84 pertaining to bill posting reads "Bill Posting: This item is also a subdivision of advertising account which agrees with that
3234 of the company and amounts to $263,765.23". The next sentence of that working sheet 84 indicates that I prepared a bill posting schedule. I filed no duplicate of that schedule with the master. That schedule is on working sheet 85. Some of the figures on working sheet 85 seem to be in Hagberg's writing, and I don't know who made the other figures. There is no writing on that sheet 85 made by me. That sheet 85 has a column in which there is written in ink the word
(3110) "Doublemint." Some one has written in lead pencil under the word "Doublemint" "50%". That "50%" looks like Hagberg's writing. That sheet 85 shows that
3235 Hagberg distributed the advertising by allocating fifty per cent. of the amount shown in the column to Doublemint. Sheet 85 purports to show certain disbursements for advertising by means of bill posting in 1915. The total expense there is 263,765.23. Working sheet 85 shows an apportionment of fifty per cent, of that amount, or $131,857.78 to Doublemint.

(Mr. Mayer offered said original sheet, or page 84.

It was received in evidence and marked Touche Exhibit 26-B.)

3236 (Touche Exhibit 26-B.)

3237 I have working sheet No. 100 before me. That is headed the same way as sheets 70 and 84. Mr. Hagberg prepared sheet 100. It was prepared at about the time as sheets 70 and 84. The first sentence of sheet 100 reads:

"Newspapers and Magazines: This item is also a subdivision of the advertising account as made by the company and by us and which amounts to $360,837.03 per Co.'s figure and to $360,937.03 by our figures."

(Mr. Mayer offered said sheet in evidence. It was received in evidence and marked Touche Exhibit 26-C.)

3238 (Touche Exhibit 26-C.)

3239 Sheet 100 refers to a schedule.

I have working sheet 103 before me. Its heading is "Recapitulation of 1915 Newspapers and Magazines." The words "Wm. Wrigley Jr. Co." appear above that. Hagberg prepared that sheet, 103; none of it is in my handwriting. That sheet divides the amount paid out (3111) for advertising, Doublemint and Spearmint. The first item on it is entitled "United States Newspapers." It shows the total to have been expended for advertising in the United States newspapers in 1915 as $221,556.57. The advertising was distributed as shown on that sheet, 3240 $111,450.67 to Doublemint; $110,105.90 to Spearmint. That is practically on a fifty-fifty basis. The next item that appears on that working sheet 103 is "Canadian Newspapers." The total amount shown on that sheet to have been expended for advertising by the Wm. Wrigley Jr. Company in Canadian Newspapers in 1915 is $58,176.64. It is allocated on that working sheet: $29,088.32 to Doublemint; $29,088.32 to Spearmint. The next item of advertising expense in 1915 shown on working sheet 103 is "Australian newspapers". The total shown on that sheet for that item is $11,664.70, all allocated to Spearmint. No part of that Australian newspaper advertising was charged to Doublemint.

The next item for advertising for 1915 appearing on that working sheet is "Magazines". The total expended for magazines in that period, as shown on that sheet, is $59,022.83. With respect to allocation on that sheet, it appears that in the Doublemint column there are two

figures. The first figure in pencil, 3,423.33 and another figure in ink below it, 9,769.56, and in the Spearmint column appears two items in pencil; 3,382.77 and below that 11,568.03. So that, speaking roughly, on that sheet a little over $13,000.00 of that $59,000.00 magazine advertising expense was allocated to Doublemint and between fourteen and fifteen thousand of it was allocated to Spearmint.

3241 I have before me the working sheet containing the notes on 1915 advertising chargeable to Doublemint for "Walls, Bulletins and Electric Signs." It is in Mr. Hag-
(3112) berg's handwriting. The number on that working sheet is 113. As to whether there is anything on that working sheet not in Mr. Hagberg's handwriting, I will say that the stencil number is not his. There is a "IV" at the top, which may or may not be in his handwriting. The document is in ink. I do not know when it was made. All of these sheets were prepared in due course by him while working on the Wrigley accounting.

(Mr. Mayer then offered in evidence original working sheet 113. It was received in evidence and marked Touche Exhibit 26-D.)

3243 (Touche Exhibit 26-D.)

3244 I have before me the next working sheet having to do with miscellaneous 1915 advertising chargeable to Doublemint. The number of that working sheet is 127. Mr. Hagberg prepared it.

(Said original sheet 127 was offered in evidence by Mr. Mayer. It was received in evidence and marked
3244 Touche Exhibit 26-E.)

3245 (Touche Exhibit 26-E.)

3246 On sheet marked 26-E it says that "We" have not seen a sample of the book matches and therefore can express no opinion as to the correctness of a charge in the Doublemint account amounting to $25,346.04. By the word "we" I presume Mr. Hagberg referred to himself. I haven't any knowledge as to what, if anything, efforts he made to see those book matches. The same working sheet also has a statement with regard to a charge for addressing envelopes, and says on that subject "We cannot verify whether the entire amount should be charged to Doublemint." So far as I know, "We" refers to Mr.
(3113) Hagberg. I have no personal knowledge as to what investigations were made or attempts made to verify that

charge. On the same working sheet, under the item "Postage and Labor" it is stated, "We cannot verify the correctness of such charge." I have no knowledge as to what efforts he made to verify the correctness of that charge.

I have before me working sheet 148 bearing upon the subject "Advertising Matter" in the 1915 account.

(Mr. Mayer offered in evidence original working sheet 148. It was received in evidence and marked Touche Exhibit 26-F.)

3248 (Touche Exhibit 26-F.)

3249 Mr. Hagberg prepared that working sheet 148 at about the time these other working sheets were gone. The first sentence on that working sheet 148 reads:

"Advertising Matter: A division of the advertising account made by the company and by us and amounting to $92,651.08."

The next sentence on that working sheet refers to "Our Schedule". I don't know in whose handwriting working sheet 152 is. It is not mine or Hagberg's. It is apparently one of the sheets that was made in the due course of my concern's work. It is dated November

3250 5, 1918. I have reason to suppose it was dated at some time other than November 5, 1918. We were not doing any work in 1918 on this job. As to whether it was possibly an error and was intended to be November 5, 1920, I will say I don't know anything about it.

I have working sheet 153 before me. It was used in

3251 making up this report. It is headed "Wm. Wrigley, Jr. (3114) Co. Advertising Matter 1915." I do not know who prepared that sheet 153. The first column is marked "A 26". I do not know what A 26 refers to, possibly to the designs. It must refer to some expense in connection with the Wrigley advertising, although it is marked "superseded". I do not know who wrote that word "superseded". As to whether that first column headed "26 A" shows a distribution of the item on a basis of fifty-fifty, I would say no, I would not say that. I do not know what the "50%-50%" written in the column headed "A 26" in ink means. I do not think that that means the method that was adopted at the time sheet

3252 153 was prepared of allocating the advertising expense that was referred to under the title "A 26". What I think is that that is practically Mr. Stanley's allocation.

I have no knowledge on the subject. There is nothing on sheet 153 to indicate that it purports to be a statement of Mr. Stanley's allocation. There are other headings on that sheet 153, such as "A 31" and "A 30" and "A 41" and "A 32". The column "A 41" also has "-42". Some of these head notes indicate an allocation of 100%, others 50%-50%, others 33 1/3% and others 50%.

3253 I have before me working sheet 154. I do not know who prepared it. There is nothing on there to indicate it was superseded. None of the handwriting or figures on that sheet are mine. I will identify all the handwriting on that sheet that was made by Hagberg. I think all the figures on there are not Hagberg's except "overhead". I cannot tell who made the other figures in the other columns. That sheet was prepared in due course, while my concern was making the investigation. The heading on that sheet reads "Wm. Wrigley Jr. Co. Ad-
(3115) vertising Matter Year 1915". Underneath that there are certain columns and there are head notes to the several columns. The first column is headed "Date 1915."

3254 The next column is headed "Description". The next column, "Total Amount". The next column is headed "Doublemint", which is itself subdivided into three columns, one of which is headed "1005", the other "50%", and the other "33 1/3%". The column headed "100%" has written immediately under it the figures "A 26". The column headed "33 1/3%" has under it "A 30". The next column is headed "Overhead". The next column as originally written was headed "Spearmint and Juicy Fruit and Others", and under that heading appears in separate columns "100%", "50%", "66 2/3%". Something has been written over the words "and Others". There is another column headed "Remarks."

I have working sheet 194 used by me while preparing the filed report. The heading is "Toronto Factory 1915". That sheet also refers to "Sample Campaign as per M. M. & P. Report 17.119 Boxes at 20.0764 $3,436.88." I assume the M. M. & P. Report refers to the Marwick, Mitchell, & Peat report. Working sheet 194 looks like Mr. Hagberg's handwriting. I imagine that refers to the report made to the master by Marwick, Mitchell, Peat & Company.

3255 Working sheet 195 is headed "Wm. Wrigley, Jr. Co.

Donation of Doublemint 1915". Mr. Hagberg prepared that. The one item reads:

"Toronto—per Marwick, M. & P. Report."

Underneath there is:

"1252 boxes at Mfg. cost. 200764 251.35."

(3116) To the extent that I examine the Marwick, Mitchell, Peat & Company report,, I found it accurate. As to whether from my working sheet 194, I can see that the Marwick, Mitchell, Peat & Company report was used with regard to the sample campaign of the Toronto factory in 1915, I will say I said I thought those initials referred to the report as regards that item of $3,436.88.

Working sheet 195 does not show that I used the Marwick, Mitchell, Peat & Company report and relied upon it, or found it correct with regard to the donation of
3256 Doublemint gum in 1915 at Toronto, and also at Brooklyn and at Chicago. Those figures were put on that sheet. I don't know whether those figures are used in the report or not. It says on sheet 195, "Toronto—per Marwick, M. & P. Report", and then gives the number of boxes and a price and a total. That same sheet also shows that at Brooklyn and Chicago there were a certain number of boxes at a certain cost aggregating a certain amount as per Marwick, Mitchell & Peat report. There is nothing on the working sheets to indicate that those figures taken from the Marwick, Mitchell reports were wrong. As to whether I had every reason to believe from my familiarity with the way the work was done and the way the working sheets were made up, that the Marwick, Mitchell, Peat report as to the items referred to in those sheets were found to be correct and were used by my people in making up my report, I will say I don't know
3257 whether we used it or not. I would have to check into the total summaries to know. There is nothing on the sheet to indicate that the figures on the Marwick, Mitchell, Peat & Company report with respect to this particular matter were or were not adopted by me. As to whether the fact that I found them on the sheets would
(3117) indicate that they were probably used, I will say I don't know that that is one of the schedules that was used.

3258 The next working sheet is number 196. It is headed "Wm. Wrigley, Jr. Co. War Tax Rebate Certificates".

3259 Mr. Hagberg wrote that sheet. The first item reads:

"Gum (D/m) used as per Marwick M. & P. Report

128,410-1/2 box at .222869	28,618.72
Postage & freight at .060000 per box	7,704.63
	36,323.35"

As to whether that sheet shows that the Marwick, Mitchell, Peat & Company report referred to was used by my people for the purposes indicated on that sheet, I will say it indicates that these figures were used. I don't know whether it is incorporated in the report or not.

I have before me a document dated June 17, 1920, being a report addressed to Master C. B. Morrison by Marwick, Mitchell, Peat & Company. I have also before me one of the schedules thereto marked "Schedule 1". Apparently working sheet 196, at the place where it refers to the Marwick, Mitchell, Peat report, took the number of boxes at 128,410-1/2 from schedule 1 of the Marwick, Mitchell, Peat & Company report which I have just identified. Referring to working sheet 195, apparently the information appearing thereon and purporting to be taken from the
3260 Marwick, Mitchell, Peat & Company report, was taken from the Marwick, Mitchell, Peat & Company report which I have just identified. As to whether there were working sheets prepared and used by me for each of the
(3118) other accounting periods similar to those which I have just identified as having been used in connection with the 1915 advertising, I will say similar schedules were made for each year. I don't know whether they are the identical schedules to this or not. It is a fact that either I or my assistants made working sheets for each of the accounting periods along the general lines of those that have been referred to with respect to 1915.

I have Exhibit 4 which is an exhibit attached to an Exhibit called Exhibit M. It is entitled "Statement of Coupons issued and redeemed by Wm. Wrigley, Jr. Co. during the period from September, 1914, to December 31, 1918".

3261 As to whether that Exhibit was taken from the work of Marwick, Mitchell, Peat & Company which I have just identified, I will say I think most of the figures in reference to the coupons issued, redeemed and unredeemed, were taken from that. I do not know what part of that

Exhibit M is original work with my concern. I would have to compare it. As to whether it is my belief that any of it is original work with my concern, I will say I don't know whether they had these percentages on their statement or not. My attention being drawn to one of the exhibits in Marwick, Mitchell, Peat & Company report which I have just identified, I will say the percentage of redeemed and unredeemed coupons are shown therein. I think that the entire schedule M—attached to Exhibit 4 is a copy of the Marwick, Mitchell, Peat & Company work. On page 13 of our report we give them full credit for it. Sheet 6 attached to the document marked for identification Touche Exhibit 12 is in my handwriting. My recollection is that that sheet is a memorandum of references
(3119) to some testimony that Mr. Hall gave in some other case. I don't know what case that was. I know the Mr. Hall who is connected with Marwick, Mitchell, Peat & Company. I got his testimony from Mr. Aldrich. I am quite sure the sheet in question does not refer to the Marwick, Mitchell, Peat & Company report that I identified this afternoon. My purpose in reading Mr. Hall's testimony given in some other proceeding was so as to
3263 learn what his views were on the subjects that I thought were involved in the case on hearing.

The sheet marked 9, a part of Touche Exhibit 12, is in my handwriting. I wrote down there the following:

"Real estate income 1917—Dr. 54,821.07—shows $15,000 payment to Brady trfd. from bldgs. and other large charges. Probably represents additions to V. B. St. plant."

I refer to the Van Buren Street plant. The item "Brooklyn moving expense" involved the commandeering by the United States Navy Department in June, 1918, of the premises then occupied by the Wrigley Company in Brooklyn, New York. It was my understanding that because of that commandeering the Wrigley Company was compelled to seek other quarters.

3264 Exhibit N attached to Touche Exhibit 12 is in my handwriting. It is headed "Statement of Interest calculated on the basis of 4%, 5%, 6% and 7%". I recall that a day or two ago I desired to correct certain testimony that I had theretofore given. One of the corrections I thought I desired to make was a statement that the depreciation or amortization of patents used in the manufacture of gum is generally allocated to cost of production, but that,

inasmuch as this cost had been agreed upon by counsel in the case on hearing, no such item should, in my opinion, be allowed under the caption of "Overhead" or
(3120) any other item of expense not contained in the caption "Cost of Production." The correction I intended to make was this: First, that I was of the opinion that as an accountant that patents are properly the subject matter of depreciation and amortization, and that that
3265 deprecitaion should be on a basis of one-seventeenth each year over the life of the patent, and that where the patents are used in the manufacture of gum, that depreciation should be included as a cost of production.

As to whether in this case on hearing I wanted to be understood from my correction and views that I am of the opinion that this amortization of patents ought not to be allowed because it is a cost of production and the cost of production has been agreed upon in this case, I will say it should not be allowed except in the cost of production. I have disallowed in my report this item, and my recollection is that I did it because I considered it a proper element to go in the cost of production and that the cost of production in the case at bar having been agreed upon, the item should be excluded. As to whether, if there had been no stipulation in this case or agreement with respect to the item of cost of production,
3266 I would consider it proper accounting to make an allowance for this depreciation or amortization of patents, I will say I would have had to make some investigation as to whether or not the machines which are patented are used in the process of making this gum.

As to whether, if a charge could properly have been made for amortization but for this agreement as to the cost of production, the Wrigley Company would lose the amount or the proportionate amount of that amortization solely because of what I consider was an agreement
(3121) as to the cost of production, I will say I don't know whether they would lose it or not. It may be in cost of production, I don't know.

As to whether, if it was not included in the Wrigley Company's cost of production, they would lose out, I will say I don't know whether the amount would be the same or not. The cost of production was arrived at so much per box.

As to whether, if the Wrigley Company in arriving at

their cost of production made no allowance for depreciation or amortization of patents, they have lost out in this case by omitting that item from their cost of production, I will say they have probably lost something. Whether an amount like that would change the cost of a box or not, I don't know.

3267 There is nothing more I want to say on that subject.

(3122) Tuesday, February 14, 1922,

3268 10:30 A. M.

W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer:

Working sheet 678 is partly in my handwriting and partly in Mr. Hagberg's. That sheet was prepared in due course. The word "superseded" is written across the face of that sheet in red ink. The word "superseded"
3269 is not in my handwriting. I think it is probably Hagberg's. I cannot state definitely whether it is or not. By the mere fact that it is marked "superseded" I do not think we used it at the time I made my first long-hand draft report, Touche Exhibit 1 for identification. I presume the sheet was prepared before I made up the first draft. I do not know exactly when we did make it. As to why that sheet was marked "Superseded" and not used, I will say it was because it must have been changed in some place, some way. As to what I mean by "changed in some way", I do not know. That sheet has to do with the number of U. P. S. coupons issued
3270 by the Wm. Wrigley Jr. Company and those redeemed and the question of contingent liability and reserve. The computations for a reserve made on that sheet were made on the basis of 60% and on the basis of 33-1/3% and on the basis of 50% and on the basis of 40%. As to under whose instructions I experimented and made computations on the basis of each of those different percentages, I will say it was on my own instructions if any instructions at all were issued. I do not know if any were issued. As to what was the object of making a computa-
3271 tion of reserve on the basis of 60%, I will say that's the
(3123) way they did it on their books. I know that the report filed before the master by the Wrigley Company did not

assert a 60% contingent liability. As to what our object was of taking the time and charging our client for a service of that type, I will say we wanted to reconcile our sheet in the first place with the books. As to what difference it made what was on the books, whether the contingent liability on the books appeared as 60% liability or 90% liability as long as the Wrigley Company's account filed with the master was based upon a 50% reserve, I will say it made the difference that we wanted to get the book figures first. As to why, I will say to agree with the books . We wanted to start from the book
3272 figures first. If we had used a 60% reserve, the conclusions reached were that the books show a contingent reserve from December 18, 1918, of $2,499,967.09. That was considerably more than the amount charged for contingent reserve in the accounts filed by the Wm. Wrigley Jr. Company. I think that reserve was on the basis of 50%.

On that working sheet 678 I made a computation on the basis of a 50% reserve. That's the basis I understand was used by the Wrigley Company in their filed account. I don't know whether the result of my computations confirm the correctness of the Wrigley Company's figures. I would have to check that to find out. I have no reason to suppose that I found their calculations wrong mathematically. On sheet 678 I made a calculation on the basis of a 40% contingent reserve. That shows
3273 $1,016,420.31. On the same sheet I made a calculation upon the supposition that a proper reserve for contingent
(3124) liability was 33-1/3%. The 33-1/3% basis is the one I adopted in my final account, Larson Exhibit 132. When I use the expression "33-1/3% as a basis for reserve" I mean 33-1/3% of the issued coupons.

I have working sheet page 681 before me. It is all in my lead pencil handwriting. I don't remember what date it was written. It was probably written before I
3274 wrote my first longhand draft of the report. I have not read over working sheet 621. I have examined it. I there said "Assuming that all coupons redeemed in 1918 were issued prior to 1918, the redemption would be equivalent to 36.63% of issues." As a result of such assumption we found by calculating the reserve up to December 31, 1917, it would come within $175,000 of redeeming all coupons redeemed up to that period and including the

year subsequent. My object in making that computation on that sheet was to compare the reserve. I was preparing sheet 678 and sheet 681 with a view of seeing what the result would be if I used different percentages
3275 for reserve. I don't know whether that refers exclusively to page 678 or not. I did not confer with Mr. Aldrich with regard to the subject of using these experimental bases. I may have told Mr. Whitworth after we did it, but not during the time we were doing it; I conceived the idea of making computations on those different bases. I do not know why I didn't make a computation on a 30% basis or why I didn't make one on a 32% basis, or on a 35% basis. I have already said that this case is the first time I have had anything to do with these U. P. S. coupons or a similar subject. I do not know that the
3276 Marwick, Mitchell, Peat & Company report condemned my basis of computation. My computation and conclusion
(3125) on the question of reserve for contingent liability for U. P. S. coupons is based upon my Exhibit N attached to my filed report. As to whether or not it is a fact that the Marwick, Mitchell, Peat & Company report contains a schedule or a summary showing percentages just as my Exhibit N and prepared on the same theory, I will say probably it shows some percentages. There is not much theory about that statement, according to what I recall. As a matter of fact, the Marwick, Mitchell, Peat & Company report contained an exhibit substantially like my Exhibit N and made up on the same principles. I don't remember what the Marwick, Mitchell, Peat & Com-
3277 pany report says in respect to that schedule or Exhibit. I read his report at one time, but I don't remember what he said. Now, reading from a copy of the Marwick, Mitchell, Peat & Company report, I will state that report says:

"A statement giving certain percentages in connection with the redemption of United Profit Sharing coupons worked up from the figures already presented is now submitted."

As to whether the statement then submitted is the one I have just been referring to as being substantially the same as my Exhibit N, I will say this is the percentage only. The same statements appear. The Marwick, Mitchell, Peat & Company report says, concerning the statement referred to in their language just quoted:

"This statement is valuable only as an illustration of the difficulty of the problem. Otherwise it is valueless."
(3126) I don't know whether Messrs. Marwick, Mitchell,
3278 Peat & Company are entirely at variance on this question or not. Marwick, Mitchell, Peat & Company say the statement is valueless. I do not consider it so. The Marwick, Mitchell, Peat & Company report, concerning which I have just been testifying, is the Marwick, Mitchell, Peat & Company report to which I refer in the Touche, Niven & Company report that was filed by me before the master as Larson Exhibit 132. There is a reference to that same report on page 13 of my filed report. Referring to the language on page 13 of my filed
3279 report, which commences as follows: "From a compilation of coupons issued, redeemed and unredeemed, etc." I will say that the report referred to in said language as being prepared by Messrs. Marwick, Mitchell & Company is the one that was prepared by Marwick, Mitchell, Peat & Company, and is the one I have just identified as being addressed to the master and dated June 17, 1920.
3280 The reason we left out "Peat" is because we think Peat is no longer a member of that firm. I think my concern has affiliations with Mr. Peat's concern in South America. I would say that Marwick, Mitchell, Peat & Company are a reliable and competent accounting firm. As to whether it is a concern of experience and ability, I will say I do not know anything to the contrary. I have
3281 nothing against them. I think they are all right.

I have working sheet 652 before me. It is in my own handwriting. It contains the following sentence:

"The entire year of 1916 was verified by checking Stanley's work sheets against credit memos on which credits were allowed jobbers. Other years were not checked against C/ms, but work sheets were summarized and totals proved."

The letters "C/ms" stand for credit memos.

The Stanley referred to is William Stanley, Secretary
(3127) of the William Wrigley Company. That statement written by me is true. We apparently found no error in Mr. Stanley's work. We said we verified it by check-
3282 ing the year 1916. As to whether in other years we did enough work to satisfy ourselves that the report of Mr. Stanley or of the Wm. Wrigley Jr. Company on that subject was accurate, I will say we, as I say there, proved

up the totals. We did not attempt to check every item each year.

I examined the report filed by the Wrigley Company with the master and their working sheets. I know that they took into consideration, in filing that report certain allowances to jobbers. They amounted to a very substantial amount, running into hundreds of thousands of
3283 dollars. Whether I examined the Wm. Wrigley Jr. Company's books and records sufficient to satisfy ourselves that their report filed with the master and so far as figures went as to that item "Allowances to jobbers", was correct, I think as to totals we found their report correct. So far as I remember, eliminating the question of proper allocation, we found their work accurate. I am now referring to "Allowances to jobbers". As to all the other items covered by the Wrigley Company report, eliminating the question of allocation, we found the Wrigley Company report was accurate. Whatever inaccuracies
3284 we did find are noted in the report which we filed with the master as Larson Exhibit 132. I do not recollect that before preparing my first draft of our report seeing a report made by an auditing concern known as Edward R. Burt & Company. I have no recollection of having seen any report by them. I don't know that the Larson attorneys, Messrs. Charles H. Aldrich and Frank F. Reed, sent to Master in Chancery Morrison who is now hearing this case, before I started to write my first longhand report, Touche Exhibit 1 for identification, a report of an
(3128) examination which they had made of the Wm. Wrigley Company's books and records. I think I heard that they did some special work. I never knew that they made any formal report, nor that it was sent to the master. I had no special knowledge on that subject before I wrote out my first longhand report. I did not know anything about any of the results of their examination. I did not know that they had examined the records of the Wm. Wrigley Jr. Company and had drawn off from them, among other information, a statement of the salaries paid to Mr. Wm. Wrigley Jr. and other officials during the accounting period or some part thereof. I knew they did some special work, just what it was I didn't know. I did
3286 not know they had made an examination covering part of the time with respect to the U. P. S. coupon redemptions. I did not see any of the results of any of their

work. I do not know now any of the results of any of their work. I have never seen their report and never heard or knew of any of the results of their work.

Exhibit A-7 attached to the Touche-Niven report, Larson Exhibit 132, purports to contain a statement of sales, cost of sales, expenses and net profits of Wm. Wrigley Jr. Company of the period October 5th to November 12th, 1918, and the proportion thereof accruing to Doublemint. The first figure on that Exhibit and the first item on it is the statement that the sales of all brands per the Wrigley Company's book during the period named were $1,-
3287 827,036.73. As to whether it is not a fact that on page 27 of the account filed by the Wrigley Company before the master with respect to the same subject, the amount is stated to be $1,726,648.88, I will say page 27 of the Wrigley account does not relate to the same subject. It is stated on that page that the total of all sales from October 5th to No-
(3129) vember 12th were $1,726,648.88. As to whether I am prepared to say that the figures I have just read from page 27 showing a total of all sales from October 5 to November 12, 1918, both dates inclusive, are not correct and that the figures that I mention on my Exhibit A-7 are correct, I will say I do not recollect that difference. I would have to check it up with the papers. I disallow
3288 in my filed report with the master an item of $18,560.90 for depreciation of buildings. That appears on page 4. The only reason for my doing so, I say is, because it was chargeable to cost of manufacture and "since the cost of manufacture has been agreed upon this item should be
3289 eliminated from overhead expenses". My reason for excluding it here was for the reason that I supposed it was included in the cost of manufacture. If it was not included in the cost of manufacture, it is a proper expense. I naturally assume that the item has already been included in the cost of manufacture. I made no investigation to ascertain whether it is included in the cost of manufacture or not. We did not investigate the manufacturing cost of sales. We made no investigation as to whether the Chicle that was involved in the loss by fire at Belize referred to at page 19 of our filed report was taken into consideration by the Wrigley Company in the cost of manufacture which they reported. If the
3290 Chicle was used during the accounting period, I, in the

report which I filed, assumed that the cost of Chicle had entered into the account filed by the Wrigley Company as to its cost of manufacture.

(3130) Tuesday, February 14, 1922.

3291 2:00 o'clock P. M.

W. W. VINCENT, resumed the stand for further cross-examination by Mr. Mayer:

The difference between my figures on Exhibit A-7 and page 27 of the Wrigley filed report is due to allocation as between periods. 1918 is divided up in to periods from January 1st to August 31st and from September 1st to October 5th and from October 5th to November 12th. It is not due to any error in either of the books of the Wrigley Company or the accounts which they filed. Our figures agree with the books and they agree with the Wrig-
3292 ley account as filed except as to the allocation. On page 14 of my filed report, Larson Exhibit 132, I refer to the United Cigar Stores' issuance of coupons. I think that was original with me. I never investigated the experience of the United Cigar Stores in their coupon business. I do not know that any such investigation has been made by anyone connected with our side of the case. One of the things that I point out at page 14 of my report is that the Wrigley number one coupons, that is, the wrappers around a five-cent package of gum are distributed through the retail trade throughout the country, while the premium stores through which the coupons are redeemed are located in the largest cities only, and for that reason perhaps a much smaller proportion would be redeemed than coupons issued, for example, by the United Cigar Stores, which we say are, as a rule, conveniently located to coupon redemption stores. I did not make any investigation at all as to what the facts are on those
3293 matters. I have no idea at all as to what percent of
(3131) redemption the United Cigar Stores or the United Profit Sharing Corporation make through the mails, and I have no idea as to what percentage of redemptions are made in cities. As to whether I pay an attention to that question at all, or make any assumption on that point in the conclusions which I set forth in my filed report,

Larson Exhibit 132, I will say the purpose of this statement was to bring out the fact, as I saw it, that the handling of United Profit Sharing coupons as a wrapper around the gum was different from any other coupon that I knew anything of. I have no figures on what other people redeem. As to whether I recognize the fact that the experience of the United Cigar Stores with respect to the percentage of redemptions that they make by mail and the percentage that they make in their city stores would have a bearing upon the correctness of my conclusion, I will say I have not made any conclusion based on the experience of the United Cigar Stores. My con-
3294 clusion was that 33-1/3% is a proper percentage to allow for contingent liability, and that conclusion is based wholly on the Wrigley Company's experience where redemptions are 26.30% of the coupons issued. As to why I made the statement in my filed report, Larson Exhibit 132 at page 14, after referring to the United Cigar Stores and their method of handling matters.

"In view of these facts and giving due consideration to the experience of the company during four and one-third years prior to December, 1918, when only 26.30% of coupons issued were redeemed, it would appear that a reserve based on 33-1/3% of redeemable value of coupons issued would be ample to provide for all coupons to be presented for redemption."

I will say the facts referred to are principally that there is a coupon issued with each five cent package of
(3132) gum, whereas with the Cigar Stores a coupon is not issued unless the man wants the coupon. In other words, it is placed on the counter and if he wants it he takes it and if he does not want it he leaves it there. I have no idea as to the extent to which that is done or as to the percentage of coupons that are issued by the United Cigar Stores to persons who do not take them. I have no statistics with reference to the United Cigar Stores at all. I do not know what the effect of that difference in custom
3295 is. I made no investigation or caused any to be made as to the custom that generally exists in the United Cigar Stores with regard to the tendering of coupons to purchasers. I assume in making my filed report that there is an actual liability on the part of the Wm. Wrigley Jr. Company to redeem all coupons which it issued, provided they are intended for redemption.

I do not know how many different institutions the United Profit Sharing Corporation, during the accounting period issued its coupons besides the Wm. Wrigley Jr. Company. As to whether it is a fact that the larger the number of institutions that used the United Profit Sharing coupons during the accounting period the more likely it would be that its coupons would be redeemed, I don't know it to be a fact. That seems to me to be a fair assumption. I do not know that the United Profit Sharing Corporation would redeem its merchandise as described in its catalogue for a given number of coupons whether they were issued by the Wrigley Company or
3296 someone else. It redeems its coupons in merchandise. I do not know how many other institutions besides the Wrigley Company issue U. P. S. coupons. I think the Cigar Stores use the same ones.

(3133) As to whether when I prepared the report which I filed with the master I took into consideration that feature of interchangeability of the U. P. S. coupons, I will say what we took into consideration was the number of coupons issued and redeemed by the Wrigley Company. We had no statistics on what other institutions redeemed. As to whether, in preparing our filed report, we ignored the effect which might result from the fact that the U. P. S. Corporation issued its coupons to other concerns than
3297 Wrigley, I will say I don't know that we ignored it. If it had any bearing on the number of coupons redeemed, it would be reflected in the experience of the company during this time, and that's the basis which we used. It was my understanding when I prepared the filed report that a person could collect coupons issued by the Wrigley Company and similar coupons issued by other concerns, and redeem them with the United Profit Sharing Corporation. I do not know that to be a fact. My understanding was that the United Profit Sharing coupons were issued to the consuming public, not only by the Wm. Wrigley Jr. Company, but by other concerns, and that
3298 the holders of coupons could redeem them regardless of whether they got them from the Wrigley Company, or from other institutions. Referring to that feature as an interchangeability of U. P. S. coupons, I think that interchangeability would have some bearing on the question whether the coupons issued by the Wrigley Company would be redeemed more quickly than would otherwise

be the case. I think also that because of the interchangeability it would result in more coupons being redeemed than if there were no interchangeability.

(3134) (Mr. Mayer then asked the witness whether it was his opinion that the size of the business of the Wm. Wrigley Jr. Company would necessarily be the controlling factor in the value of the Wrigley Company's coupons redeemed. Mr. Aldrich objected to the question. The objection was overruled.)

The witness continued:

3299 No. The controlling factor in the value of the coupons redeemed, as I see it, is the contract which the Wrigley Company has with the United Profit Sharing Corporation. I think I understand what the words "controlling factor" mean. I answered that in my opinion the con-

3300 trolling factor was the contract which Wrigley had with the United Profit Sharing Corporation which stated the amount which the Wrigley Company agreed to pay for these coupons. I understood that the Wrigley Company had its option to either pay the United Profit Sharing Corporation $2 for each 1,000 No. 1 or one-fifth cent coupon issued to the Wrigley Company, or to pay the United Profit Sharing Corporation $3 for a 1,000 such coupons as and when redeemed.

3301 I have now stated, either in my oral testimony or in my filed report Larson Exhibit 132, all of the things that I took into consideration in formulating my conclusion that 33-1/3% would be a fair basis or an ample basis for contingent reserve on account of unredeemed U. P. S. coupons. In arriving at that figure I paid no attention to the result of the World's War. I based it on Wrigley's experience as shown by its books. In formulating my final conclusions I did not investigate the relative number of coupons that were required for a given article during the different years in the accounting

(3135) period. As to whether I took that question into consideration in formulating the conclusions in the filed report, I will say we took into consideration only their

3302 experience during this period. I was not aware or did not understand that the number of coupons required in order to exchange them for a given article of merchandise varied from time to time between August, 1914, and November, 1918. I made no investigation of that.

Page 121 of the Marwick, Mitchell, Peat & Company

report purports to show a test list of coupon values of merchandise offered by the United Profit Sharing Corporation giving in comparative form the values shown by four successive catalogues. The first article that appears there is Boston Garters. That shows that on September 1, 1916, 60 coupons were required to get the garters, and that 75 coupons were required for that purposes on May 31, 1917, and that 90 coupons were required for that purpose on June 30, 1918. Taking purely by way of illustration, another article on that page, Winslow's ball bearing roller skates, that shows that on September 1, 1916,
3303 500 coupons were required to get those skates, and on May 31, 1917, 675 such coupons were required for that purpose, and on June 30, 1918, a thousand such coupons were required for that purpose. There is also shown on that page the article Wiss dressmaking shears, and that on September 1, 1916, 200 coupons were required to get the shears, on May 31, 1917, 250 coupons were required for that purpose, and on June 30, 1918, 400 coupons were required for that purpose. Without going through all the items shown on that page in the Marwick, Mitchell, Peat & Company report, it shows a very marked increase
(3136) of the number of coupons required on the three dates mentioned for a given article. I saw that page in the Marwick, Mitchell, Peat & Company report before I filed my report with the master. I did not question whether it was accurate or whether it was not. It was not checked
3304 up at all. As to whether I had a general knowledge, as a citizen of this country, that the price of merchandise was rising from 1914 right along up to and through the end of the accounting period, I will say I don't recollect whether it commenced in 1914 or not, but there was an increase. I don't know whether this increase in the exchangeable value of articles would have a tendency among coupon holders to hold their coupons until the prices of merchandise would fall. I didn't take that question into consideration in formulating my conclusion as to what would be a proper percent. for reserve for redeeming U. P. S. coupons. Our reserve was based on our experience. As to whether I took into consideration, in formulating my final conclusions on this U. P. S. contingent liability question, what the effect was of millions of men leaving the United States to go abroad because of the War, I will say I had no means of knowing what

3305 effect that would have. I do not know that I took anything into consideration except the Wrigley Company's books. In my opinion, what constitutes a fair charge for reserve for contingent liability for the issuance of coupons should be determined by the experience of parties dealing in coupons. I have made no such investigation as to any concern, and don't know of any such having been made, except the Wrigley accounts. I know what allowances the United States Government makes for a contingent liability because of the issuance of coupons.

(3137) The source of my knowledge is Regulation 45. The
3306 Government requires one to base its reserve for coupons on his experience. I have had no experience with the Government in connection with any such matters. I might be influenced as to my conclusion respecting what is a proper amount to set up as a reserve for contingent liability for unredeemed coupons, if I knew that it was a common thing for coupons to be redeemed ten and fifteen years after they were issued. The conclusion which I set up on the U. P. S. subject in my filed report would not be modified if I knew that the experience of the United Cigar Stores or the United Profit Sharing Corporation was to redeem about as many coupons by mail as in cities.

3307 When I told the master in my filed report that

"It is a fundamental principle generally accepted by the commercial world that interest is, in effect, an appropriation of profits and since the profits from Doublemint have been held to belong to the Larson Company a deduction of a part of these profits is not permissible."

I didn't know that one of my employers disagreed with that conclusion. I wrote that paragraph at the dictation of Mr. Whitworth.

3308 Producing my original handwritten draft of the report, and also the typewritten copies of Exhibits 1 and 2 for identification, I will say I think that it is in my own hand, but it was at Mr. Whitworth's dictation I wrote it.

Referring to page 17 of my filed report, and eliminating the question of dollars which have been charged by the Wrigley Company, I don't know whether I would have come to the same conclusion that I did in my report as to the propriety of the Wrigley Company making a deduction for income and excess profits taxes which they paid to the United States Government, if there was

no law requiring the Larson Company to account for those profits when received by the Larson Company. I did not consider it from that angle. As to why I then
(3138) stated at page 19 of our filed report that, "in our
3309 opinion, no deduction from profits on Doublemint for income and excess profits taxes should be permitted in the accounting, for the sufficient reason that the Larson Company will be required to pay federal taxes on whatever amount they recover as a result of this litigation in the year in which they receive it", I will say that was because we thought that was a sufficient reason why Lar-
3310 son should not be taxed twice. I want to state that the controlling reason for coming to that conclusion was that Larson had to pay taxes on the amount that was finally awarded him. I think the question as to whether the Wrigley Company should be permitted to make a deduction for income and excess profits taxes is probably entirely a question of law. When I prepared this report,
3311 Larson Exhibit 132, I already knew what Mr. Aldrich's views were on this item of income and excess profits taxes. His theory was the same as ours. I never have been interested in any other accounting where the question was involved as here as to the right to deduct from profits, income and excess profits taxes. On page 19 of the filed report, I said "The Wrigley Company's remedy is to seek reimbursement from the government of any overpayments of taxes by reason of having included in its return profits which belong to the Larson Company." I can't answer as to whether that thought originated with me, Mr. Whitworth or Mr. Aldrich. I think Mr. Whit-
3312 worth and I both agree on that. It voices my opinion. In formulating this conclusion regarding this question of deducting for income and excess profits taxes, we considered the remedy which we believed the Wrigley Company had to relieve itself, namely, by seeking reimbursement from the government for whatever it may pay over to the Larson Company. Our conclusion, as reported to the master, was influenced by the existence of that remedy. We stated in our opinion Larson should not
(3139) be charged and that Wrigley could get a refund from
3312 the government. (The witness was then asked when, in his judgment, the Wrigley Company ought to seek re-
3313 imbursement from the government. Mr. Aldrich ob-
3314 jected. The master sustained the objection on the

grounds that it was purely a question of law.) I prepared that part of our filed report beginning on page 20 and headed "Conclusion". The ideas contained in that "Conclusion" emanated with me. If a manufacturer produces four separate, distinct articles, and when the year is closed he has made a net profit of ten million dollars, no inference can be drawn therefrom as to what the net profits were on any one of the four separate articles. He could not tell what profit he made on any particular article. A successful manufacture of several articles might make large profits on some and sustain losses on others. That is not uncommon. I believe it is not uncommon to find a manufacturer spending large sums of money in anticipation of the exploitation of a
3315 new article. Such sums may be expended by way of plant or machinery or equipment or places of business or advertising. I was present during the examination of Mr. Whitworth as a witness in this case and I think I heard all his testimony. As to whether I agree with his testimony to the effect that all the conclusions that are in this filed report, exhibit 132, with respect to advertising, are based entirely upon his interpretation of the decree referring the case to the master, namely, that it required an allocation of advertising expenses on the basis of Doublemint sales to all sales, I will say, partly on that and partly also for the reason that the records, as we say, the invoices, didn't show the information on which a proper allocation could be made. If a proper basis of allocating advertising is the ratio of Doublemint
3316 sales to all sales, then it was unnecessary for me to find out from the books and records what the nature of the advertisements were. As to whether, therefore, the pres-
(3140) ence or absence from such records as I examined of
3316 the nature of advertising or the difficulty that I may have had in finding out what the nature of the advertising was, was entirely immaterial if all advertising is to be allocated on the basis of Doublemint sale sto all sales, I will say, we would want to know that all charges to the advertising account were properly charged in the course of business. I mean it would be important solely for the purpose of finding out whether that number of dollars was actually expended for advertising. If the proper apportionment is on the basis of relative sales, it would be true that the necessity to see the invoices or get the in-

formation with regard to advertising had to do only with the question of ascertaining whether that number of dollars was spent for advertising which the Wrigley Com-
3317 pany claims. I based my conclusion as to how to allocate upon my interpretation of the decree referring this case to the master, after I had examined the records. It is my opinion that the decree directs us to base it on proportion of sales, and I base my conclusions, as set forth in the filed account, with respect to advertising, upon that interpretation of the decre, for the reason that we found that it could not be allocated any other way
3318 properly from the records. I cannot say whether my conclusions expressed in this filed report have been any different from what they are on the subject of advertising, if there had been submitted to me full records showing every dollar that was spent by the Wrigley Company during the accounting period, showing the nature of the advertising or bill posting or street car cards of newspaper or magazine advertising or whatever it was, showing the number of insertions, the cost of each insertion, the design o rthing advertised, so that I would have had complete information before me. The conclusions expressed in in my filed report, exhibit 132, under the sub-
(3141) ject of advertising, are based upon the supposition
3318 that the decree referring the case to the Master directed that advertising expenses should be allocated in the proportion of Doublemint sales to all sales. I don't know whether I would have made that same kind of an allocation if the decree of reference had never been entered. That is, I would want to see each advertisement and determine for myself how it should be allocated. I would have to study it. I made no such study in this case.
(3142) The memorandum reading: "Expert evidence re ap-
3319 portionment of advertising" on Touche Exhibit 3, is in my handwriting. I don't know what it means unless it refers to Mr. Hall's testimony in another case. I don't know now whether it refers to a memorandum that it was concluded at that conference on about the 3rd of December, 1920, that I would have to have experts in order to prove the proper method of apportioning the advertising. I have had no conference with any experts on that subject, nor have I been present at any such conferences. I don't remember who conceived the idea of suggesting that there ought to be something set up by way of a

good will because of the nature of the Wrigley advertis-
3320 ing. I have not had any experience outside of that involved in this suit with regard to allocating advertising as between products. I didn't investigate at all as to what would be the normal amount for the Wrigley Company to spend for advertising any particular brand. I don't think in preparing this filed report I assumed that the Wrigley Company required any given amount of advertising to retain normal Doublemint sales. We gave consideration to the question as to how long the Wrigley Company would receive a benefit from advertising after
3321 the cessation thereof. If I wanted to determine the profits that a merchant makes or made during a year on the theory that whatever they were he should pay them over to someone else, I would have to find out just what that merchant had at the beginning of the year and what he had at the end of the year in merchandise. In other words, I would have to take an inventory of his mer-
3322 chandise. If I were a person who had to give up my profits made by me as a manufacturer four or five years back, and four or five years after the accounting period, and if I wanted to make an honest account of what profits I made during that year, so as to pay them over to someone else, or if I thought I was the owner of some mining land and I was developing and mining that land, and some years afterwards the court decided that I did not
(3143) have good tile to the mining property, and that I
3322 should turn over what profits I made during a certain year, and I wanted to make an honest account of thos profits, I would take an inventory. I don't know whether it would be possible to take the inventory two or three years afterwards or not. Eliminating that feature, I would not say it would be absolutely necessary to have an inventory, but it would be helpful.

(3144) If no inventory had been taken, if the assets consisted
3323 of a plant, machinery and equipment, and it happened that the court decided just at the close of the year that my title was bad, and there was no difficulty in remembering just what property was on hand at the beginning of the year, I would proceed to inventory what was on hand at the beginning of the year. It would not be necessary to have the value of the buildings and the machinery for the purpose of calculating the profits. If it was a case of a manufacturer, I would make an inventory of

what merchandise I had at the beginning of the year. I would value the merchandise at cost. Even if the cost
3324 was very much more than the actual, fair, market value, I think it would be fair to the person ultimately held to be entitled to the profits to value it at cost.

If the merchandise had shrunk so that on the first day of the accounting year it was only worth one-half as much as I had actually paid for it, I would still say I ought to use the cost price in determining what was the profit or loss.

If I bought the goods a year before the accounting period and I wanted to find out what my profits were during that particular accounting period, I would say, as an accountant and as a person who was desiring to fairly and honestly account for the profits, I ought to take the merchandise at cost, even though on the first day of the accounting period it was worth only half
3325 of what it cost. As an accountant, I don't remember of ever having had any experience along the line of the supposed case.

(3145) February 15, 1922.

3326 10:30 o'clock, A. M.

W. W. VINCENT, resumed the stand for redirect examination by Mr. Aldrich:

The Witness: Referring to working sheets of Touche Niven & Company which have been referred to during my cross-examination as to the advertising account which show that I made, largely through Mr. Hagberg, a detailed examination of that account, I will say my plan was to verify the advertising charged in the Wrigley books and also to ascertain how the advertising charged
3327 in the accounting was arrived at. The amount expended for advertising was verified, with the exceptions noted in my report.

My objections to the method of allocation adopted by the Wrigley Company were based on the ground that the apportionment of the Wrigley Company made no allowance for the portion of the advertising devoted to the name "Wrigley" and to the general business.

In my opinion, the method of allocating the advertising in accordance with the space occupied was not followed

3328 by the Wrigley Company. The Wrigley Company's allocation was to apportion the cost of the ad on the basis, for example, of 33 1/3% chargeable to Doublemint if the Doublemint package was shown on the ad with the other packages. Under that method the entire amount of the cost of the ad was charged to the three brands of gum and nothing was allowed for the portion of the ad devoted to the name and the general business.

3329 I have seen some of the advertisements that were made exhibits in the record in this case. From those that I (3146) examined it appeard to me that fifty per cent or more of the space of these advertisements was occupied by the advertising of the Wrigley name and the Wrigley business generally. It was because of that that I say on page 12 of my report what I do in the first paragraph appearing on that page. The opening sentence of the paragraph to which I refer reads:

3330 "On the assumption that fifty per cent of the amount expended for advertising each year represents the cost of advertising specific brands of gum and that the remaining fifty per cent should be regarded as expenditures made for the purpose of building up trade names and good will."

I will show how I arrive at the figures $5,505,340.97 in the paragraph to which my attention has been called. By referring to Exhibit O it will be seen that the total advertising expense was $6,363,082.11 and that the unexpired portion at November 12, 1918, amounted to $857,741.14. That figure appears in the first and last columns of Exhibit O. By deducting the unexpired portion at November 12, 1918, from the total advertising expense you get the figure which you have just mentioned of $5,505,340.97.

Mr. Mayer yesterday called my attention to page 129 of the Marwick Mitchell report, being page 13 of the United Profit Sharing coupon subject, and the paragraph

3331 at the top of the page reading as follows:

"This statement is valuable only as an illustration of the difficulty of the problem. Otherwise it is valueless, for the reasons now given, each group being dealt with in turn."

There is other language on that page and in connection with the tables connected therewith, which, in my opinion suggest an adequate reason for not agreeing with that

paragraph. Those reasons appear in the next paragraph which reads:

"1. Percentages of coupons redeemed and unredeemed for each year, based on the issues for that year. The
(3147) redemptions in any year have no connection with the issues for that year. Broadly speaking, it can be said that only such coupons as are required to round out collections of coupons issued in previous years are redeemed in the year of issue."

Referring to the table at page 124, being page 9 of
3332 the United Profit Sharing Coupons subject headed "Data relative to United Profit Sharing Coupons issued and redeemed" I will say: "This table shows by months the coupons of each class, that is, No. 1 coupons, No. 5 coupons and No. 25 coupons issued and redeemed for each month of the respective years. For the period from September 1, 1914, when the coupons were first issued, to August 31, 1915, which is the first year, the table shows thirty-nine millions and over coupons were redeemed. I have made the computation roughly. As to whether that shows that in the first year of the issue, contrary to the statement to which I have called the Master's attention, there was a redemption of the coupons for that year. I will say thirty-nine millions of the coupons issued were redeemed.

The reserve set up in the Wrigley books for the redemption of coupons as finally determined upon by them was based on sixty per cent of the coupons issued. I
3333 testified that in their report as filed with the Master they made their computations on a basis of fifty per cent. We made the computations on the basis of sixty per cent and fifty per cent for the reason that the Wrigley Company had set up the sixty per cent reserve on its books and that they claimed a fifty per cent reserve in its report filed with the Master. We wanted to satisfy ourselves as to what the books showed and also what the
(3148) Wrigley statement showed. We wanted to find out whether their figures were accurate.

I found, after making a test of the Marwick Mitchell report on that subject, that they had arrived at the conclusion that the actual experience of the Wrigley Company in redemptions was that 26.297% of the coupons issued had been redeemed. That is on page 128 of the
3334 Marwick Mitchell report.

There were years where there had been a higher rate of redemption than the figure I have mentioned. This statement shows that for the year to December 31, 1916, the percent of coupons issued was 31.25; in the year to December 31, 1917, it was 31.31. For the year to December 31, 1918, 27.17; and the total for the entire period was 26.30. 26.30% was on the cumulative basis. I am
3335 not sure whether the others were.

The figures which are taken from the records seem to bear out that the peak has been reached. I considered the figure named in my report, which was 33 1/3% afforded a safe margin in view of the experience of the company.

By my statement on cross-examination to the effect that the Wrigley report showed a claim on the part of the Wrigley Company for taxes in excess of approximately 200%, I meant the Wrigley Company shows in
3336 their statement filed with the Master that they lost in Doublemint the sum of $272,627.53 and that they deducted for income and excess profits taxes the sum of $563,933.89. Now, if you eliminate the tax from the loss, you would get a profit before taxes of $291,306.36, and on that profit of $291,306.36 they have assessed a tax of $563,933.89.

The result of the Wrigley report as filed is that the Wrigley Company claims a credit of the amount of the tax as named by me on a business in which they assert
(3149) they suffered a loss of the amount I have named; that is, the loss was after deducting the tax. Before deducting the tax there was a profit.

Turning to page 9 of the Touche Niven & Company filed report, and calling attention to "(3)", which is an explanation of an item appearing in the table above, I will explain to the Court what that item is, showing an error made by the Wrigley Company in favor of itself of $38,976.61. The table relates to street car advertising
3337 and the item refers to the period from February to December 31, 1915, in which period the total amount was $284,946.96, of which Doublemint was charged $181,450.09 and other brands $103,496.87. The notation with reference to that item states that Doublemint's charge of $181,450.09 is supposed to be fifty per cent of total and that the company made an error in its favor of $38,976.61.

My instructions to Mr. Hagberg when I put him on the advertising account of the Wrigley Company were to ascertain, or rather, to verify the advertising charges as

shown by the books and also to reconcile the books, if possible, with the computations made by Mr. Stanley. It was no part of my instructions that he should make any allocation of the amounts expended by the Wrigley Company, and I don't understand that he ever did so. We gave no instructions about allocation. We thought we would do that after we had all the data if it was possible to get it.

It is not my understanding that in the working sheets prepared by Mr. Hagberg he attempted in any way to
3338 make any allocation of the advertising account.

Recross Examination by Mr. Mayer.

On page 9 of my filed report I point out an error that the Wrigley Company made in its favor of $38,976.61. I
(3150) think that was an error which was patent on the face of it when I saw the Wrigley Company's working sheets. I don't mean to intimate that there was an effort by the Wrigley Company to conceal anything or to defraud the Larson Company out of that $38,976.61. So far as I know, it was purely a clerical error.

Referring to the income and excess profits taxes, I am aware that the accounting period covered by Wrigley & Company's accounts began about July 28, 1914, and ended in November, 1918. I understood it was the duty of the Wrigley Company in filing its accounting to do so by
3339 periods or annual rests. I understood that the Wrigley Company's filed account covered first the period from July 28 to December 31, 1914. Next the year 1915. Next the year 1916. Next the year 1917. And next so much of the year 1918 as was covered by the decree; that is, up to November 12, 1918. I also understood that the Wrigley Company filed account shows the profits or losses of the Wrigley Company with respect to its Doublemint business during those periods separately. In so far as it showed the account separately for each of the named periods, I understood it was proper to show it.

3340 I understood that during the first period of the accounting, that is, for 1914, the Wrigley account as filed showed that the Doublemint business was operated at a loss of something over $300,000. I knew that the entire business of the Wrigley Company as a unit was conducted at a profit in 1914. I do not believe that anything was

deducted by the Wrigley Company in its account filed with the Master for the 1914 period on account of income or excess profits taxes.

I know that the Wrigley Company claimed in the account filed with the Master during 1915 that its Double-
(3151) mint business was operated at a loss of over $200,000. I know that the entire business of the Wrigley Company as a unit for 1915 was conducted at a profit. I know that in the account filed by the Wrigley Company with the Master they made no deductions on account of income or excess profit taxes for the year 1915.

3341 I know that in the account filed by the Wrigley Company with the Master that they showed a loss in the Doublemint business in the year 1916. I know that the entire business of the Wrigley Company for that year was conducted at a profit. I know that in reporting to the Master that the Doublemint business was operated at a loss for the year 1916 the Wrigley Company made no deductions on account of income or excess profits taxes.

The first period of time during which the report filed by the Wrigley Company with the Master shows that any profits were made in the Doublemint business is for the year 1917. The Wrigley Company also shows a profit for the year 1918 in the Doublemint business, in the report filed. The only time the Wrigley Company
3342 sought to make any deductions on account of income or excess profits taxes in the accounts filed with the Master was during the years when the Doublemint business was operated at a profit.

As to whether, when I gave some mathematical formula in answer to Mr. Aldrich's questions on his direct examination this morning, by which it appeared that the amount deducted for income and excess profits taxes was as much as, or perhaps more than, the aggregate loss shown by the Wrigley account for the entire accounting period, I meant to intimate anything as to whether it was legally proper or legally improper to deduct income and excess profits taxes, I will say I was not answering
(3152) as to legal part of it. I consider the question of whether or not income, and excess profits taxes are deductible at all in an account of profits is a question of law and not one of accounting.

(Mr. Mayer then asked the witness a question on the subject of United Profit Sharing Coupons. Mr. Aldrich

objected to the question. Mr. Aldrich then agreed that
3343 he didn't mean by any question he put to the witness to intimate that Mr. Mayer had misquoted anything in any of his questions to the witness with respect to what was contained in the Marwick Mitchell Peat report. Whereupon Mr. Mayer withdrew the question.)

Marwick, Mitchell, Peat & Company stated that they regarded these percentages upon which I based my conclusion that 33 1/3% was ample for reserve as being valuable only as an illustration of the difficulty of the problem and being otherwise valueless. They give three
3344 reasons for that conclusion. Mr. Aldrich drew my attention to only one of these reasons. One reason was merely a reference to the percentage of redemptions in a given year as compared to the coupons issued in that year.

Another reason given by the Marwick, Mitchell, Peat & Company report for disregarding my basis of arriving at 33 1/3% has to do with the cumulative percentage of coupons redeemed and unredeemed based on total issues to the end of each year. I will read the second reason given by Marwick, Mitchell, Peat & Company for saying that these percentages that I have adopted
3345 in my Exhibit N attached to my filed report are valuable only as an illustration of the difficulty of the problem and are otherwise valueless.

"2. Cumulative percentages of coupons redeemed and unredeemed based on total issues to the end of each
(3153) year. These percentages are of no value, because the redemptions are stated as percentages of the total issues to the end of any year. Included in the issues are a tremendous quantity of coupons which have had no chance to be redeemed. In order to get any results from this line of reasoning, it would have to be assumed that the redemptions to the end of each year represented redemptions of coupons issued to a certain date; that the coupons already redeemed which were issued after that date will be offset by coupons issued prior to that date which will be redeemed in the future."

Marwick, Mitchell, Peat & Company's third reason for saying that these percentages are valueless was:

"3. Percentage of increase of issues and redemptions each year based on the figures for the preceding year. In the first place, the available percentages in this case are too few; it is impossible to tell from three sets

of figures whether or not the trend is for the issues to
3346 exceed redemptions. Furthermore, because at the outset the figures relative to issues are so much greater than those relative to redemptions, the respective sets of percentages do not convey any adequate idea of comparative values."

As to whether I say that from my examination of the matter I came to the conclusion that 33 1/3% of the unredeemed coupons would be ample for a reserve because I thought the peak had been reached, I will say that I didn't say it was because I thought the peak had been reached. I said that the reserve of 33 1/3% was based on Wrigley's experience. I didn't say, in answer to Mr. Aldrich's question, that I found that the highest percentage that the Wrigley Company had redeemed at any time during the accounting period figured on a cumulative basis was 26.30%. I called attention to two years when the cumulative percentages were higher than 26.30%. The cumulative percentage of coupons redeemed based on the total issue to the end of the year
3347 1916 was 22.60%, and up to the end of 1917, 25.91%. I don't know whether or not I said, in answer to Mr. Aldrich's question, that the highest cumulative percent-
(3154) age of redeemed coupons that I found was 26.30%. I think that is the highest cumulative figure. As to whether I was wrong when I said that those cumulative percentages ran up to 31%, I will say that 31% represents the percentage of redemptions to coupons issued within the particular year.

I did not base my conclusion that 33 1/3% would be an ample amount for reserve upon the supposition that 26.30% was the peak. I based it on what the record showed as to the number issued and the number redeemed. I don't know which is the more important consideration, the percentage of coupons redeemed in one year as compared to the coupons issued in that identical year or the cumulative percentage of coupons redeemed based on total issues from the beginning and running up to the end of the period. You should consider both. I don't care to give the Master any opinion of my own as to which I regard as the more valuable, the more instructive, the cumulative percentage or the percentage of those issued in a year compared to

those redeemed in that particular year. I should consider them both to find the trend of redemptions. I don't know offhand which of those percentages I regard as more instructive and more valuable. I would rather rely on the cumulative percentage, but I think you should consider the trend of the redemptions. My opinion is that the cumulative percentage throws more light
3349 and is more valuable.

The peak of redemptions as compared with issues in any particular year was in 1917. The cumulative percentage is, however, higher at December 31, 1918; that is, higher than it was in 1917 or prior. It is a fact that the cumulative percentages of coupons redeemed and unredeemed based on the total issues to the end of each year
(3155) constantly increased during the accounting period. It is my understanding that no coupons were issued before September, 1914. It is a fact that at the end of the
3350 year 1914 there were 1.48% of coupons issued up to that date redeemed. At the end of 1915, 13.90% of all coupons issued up to that date were redeemed. At the end of 1916, 22.63% of all coupons issued up to that time were redeemed. At the end of the year 1917 the percentage of coupons redeemed compared to those issued up to that time was 25.91. In the following year, 1918, at the end of the accounting period the percentage of coupons redeemed compared to all that had been issued up to that time had increased to 26.30%.

3351 I don't mean to intimate in my opinion that that increase I have just testified to came to a stop and the peak of redemptions have been reached at the close of the accounting period. I don't know anything about the period subsequent to December 31, 1918.

I said, in answer to one of Mr. Aldrich's questions, that the reason why I computed on my working sheets the result of a reserve based on 60% was because the Wrigley books of account had set up such a percentage of reserve. As to whether I thought it was a matter of importance at all in this case to find out whether, when Wrigley set up a 60% reserve on his books, his computations were right so long as he was not claiming before the Master a reserve based on 60%, I will say it was important for us to know what the books showed.

3352 I didn't have to compute the result of a reserve contingent liability on the basis of 40% in order to test the

accuracy of Wrigley's books. As to whether I did make a test on a 40% basis, I will say there are some such
(3156) figures in the working papers which are marked "Superseded." I examined some of the Wrigley advertisements in the record I cannot tell the Master how many there are actually in the record before the Master. I made no measurements of any of those advertisements that I inspected. I made no calculations from which I
3353 can tell the aggregate space used by any advertisements or by all the advertisements.

When I said, in answer to Mr. Aldrich's question, that fifty per cent or more of the space was devoted to "Wrigley's" of the advertisements in the record that I examined, I didn't wish to be understood as expressing an opinion as to what percent of the space used by all the advertisements was covered either by the word "Wrigley's" or by general language. I stated that I only saw some of the photographs.

I don't know just when the originals of the photographs were inserted or used or posted. I understand that the photographs are of advertisements during the
3354 infringing period. I didn't get my understanding from any one. I presumed they would not be impounded or included in the record if they were not photographs or advertisements during the infringing period. I don't know that I would be surprised, if, as a matter of fact, the record before the Master included photographs of advertisements that were not inserted during the accounting period.

I said that, in my opinion, the Wrigley Company did not follow the space method in its allocation of advertising. The method followed by the Wrigley Company in their allocation of advertising as reported by them in the accounts filed with the Master, is the method which I stated in answer to Mr. Aldrich's question, and that is, where there were three packages of gum on an ad, it was divided one-third to Doublemint.

If there were only two packages advertised, and Dou-
(3157) blemint was one of those packages, I understood the Wrigley Company allocated the expense of it in their filed account by charging Doublemint with fifty per cent
3355 of the ad. If there were three packages in the ad, then it is my understanding the Wrigley Company allocated one-third to Doublemint.

Supposing there were only two products advertised, one Spearmint and one Doublemint, and supposing the advertisement contained the name "Wrigley" and contained language that had reference to these gums in a general way, the taste, the flavor, the advantages of chewing, and supposing the space occupied by each of the two advertised packages was not uniform; I can't answer as to how I assumed the Wrigley Company allocated the cost in their filed account. I don't know.

(Mr. Mayer then moved that the following part of the Touche Niven Company report, marked Larson Exhibit 132, be stricken from the record, stating that it
3356 appeared on page 12 of said report: "On the assumption that 50% of the amount expended for advertising each year"—the Master then stopped Mr. Mayer and said that he would deny the motion, as he would not pass on a motion of that sort until it had been put in writing.)

I don't know how the Wrigley Company allocated the cost of advertisements where the space occupied by
3357 the particular advertised products differed. Mr. Hagberg can answer that better than I can. I made no investigation of that subject. Mr. Hagberg handled the
(3158) advertising question.

3358

February 15, 1922.

2 o'clock, P. M.

JOHN S. HAGBERG, a witness produced on behalf of L. P. Larson Jr. Company, being first duly sworn, testified on direct examination by Mr. Aldrich.

The Witness: My name is John S. Hagberg. I am an accountant. I live at 3823 Drake Avenue. I have been an accountant practically twenty years. I went
3359 through a school of commerce in Sweden, where I was born, and also was employed in Germany for two years in accounting, and after that in this country. I have had schooling in this country and practice. I am not a certified public accountant. I have been with Touche Niven & Company a little over four years. I was engaged on this Larson-Wrigley case and worked in connection with advertising. So far as I know, I spent more time on the Larson-Wrigley accounting than any other employe or

member of the firm of Touche Niven & Company. I was particularly engaged in this accounting on the advertising expenditures.

I received my instructions from Mr. Vincent. They were to ascertain what the total advertising expenditures of the Wrigley Company were during the periods from 1914 to somewhere in 1918; I cannot recall exact dates;
3360 and also to endeavor to locate the charges made in the Wrigley report filed before the Master in Chancery. I did so with a few exceptions, which I have reported to the office, and, I think are I included in the Touche Niven report filed here.

I had no instructions to make any allocation of the amount expended for advertising as between the different brands of gum. I did not make any allocations. In
(3159) general way, with such exceptions as are noted, I found that the amount claimed by the Wrigley Company to have been expended in advertising had been expended in advertising in some form or another. My answer does not in any way involve the question of distribution of these advertising expenses among the different brands of gum.

3361 I investigated or looked into the form of the Wrigley advertising in a general way while engaged in this investigation. I know in a general way the method adopted by the Wrigley Company in the distribution of the money expended for advertising as between the several brands of gum. In advertising that was printed or illustrated advertising, they would divide the cost of the entire advertisement as between the brands whose names are illustrated on packages which appeared in the advertisement. On other advertising which was not printed they would either charge the entire amount to one brand or one-half or one-third, or some such fractional part of the entire amount, to the different brands. As I understand it, they determined the question as to the division of the cost of any given advertisement as follows:

3362 First, by the number of brands mentioned in the advertisement, but in unequal parts, sometimes dependent upon the size of the space occupied by each brand. As an illustration, if there were two brands on it, if one brand occupied twice as large a space as the other brands, then one-third of the advertisement would go to one brand and the other two-thirds to another brand, and a

division of that nature was sometimes in small fractions, I think up to twenty-seventh parts even of the entire cost; but in making a distribution of that kind it was not taken into consideration whether the description of those two brands occupied the entire advertisement, they
(3160) may only occupy a very small portion of it and still be divided specifically into two brands instead of as a general charge. I mean that the cost of the entire advertisement under the conditions I have named would be divided between the two brands.

In the case of an advertisement where there were three brands named in the advertisement, the division was made in the same way as I described. I wish to be understood as saying that this division covered the cost of the entire space occupied, without reference to the ques-
3363 tion of whether or not a part of such space or even a large part of it was taken with the name "Wrigley's" or matter that was concerned with the institution.

In my opinion, the method adopted by the Wrigley Company was erroneous. I never concurred in that as a proper method of allocating advertising.

Cross-Examination by Mr. Mayer.

I have been in the manufacturing or commercial business as an employee in this country and in the old country. I am 41 years old. The longest time I was ever
3364 employed by any institution was about eight years. That was by Barnard & Miller, who are in the printing business in Chicago. I had charge of the credits, collections and credits. They are known as low printers. They print briefs and abstracts of records and things of that kind. They have accounting questions of importance in their business. They do quite a little advertising. All their advertising is what is known as institutional advertising. The entire amount is charged to advertising expense, and finally gets into overhead.

I have never been connected with any business that advertised more than one product. I have never had occa-
(3161) sion to investigate outside of this Wrigley case the
3365 question of allocation of advertising. I don't want to pose before the Master in this case as having had any experience of any kind as to what is a proper or a cus-

tomary method of allocating advertising of the type involved in the case on hearing—only in a general way. By general way, I mean that from the theoretical standpoint and a theoretical knowledge that I have as an accountant, I know generally how advertising should be charged, but as an accountant I have never had any experience in such a matter; as an individual, as an employe working for somebody else, I never had any experience on that subject. I get my theories from the reading of text-books and from information picked up during my work during the years that I have been working.

3366 Barnard & Miller never had occasion to allocate the expense for their advertisements. I have no book in mind which discusses the question of the proper method of allocating advertisements upon which my opinion is based, but I have in mind text books with reference to other departmental expenses that should be divided into different products. As to whether I have ever read anything in any text book as to the proper way of allocating expenses similar to advertising expenses where the merchant or manufacturer makes more than one article, I will say the text book to which I have referred states that for the purpose of allocating expenses as near as possible, the charges should be made to that individual product, but where the expenses are of a nature which cannot be allocated to a specific article, they should be treated as a general expense and be divided into the different articles on a percentage basis.

As to what reason there would be in the case I have in (3162) mind why there could not be an allocation, I will say if all records and everything pertaining to this expendi-

3367 ture were available, it could be done.

I examined the Wrigley Company's invoices for their posters and street car advertisements. I examined all I could find. I did not examine the Wrigley Company's contracts for the posters and the street car cards. I didn't examine the orders which they gave for those items. I didn't examine their shipping instructions or their bills of lading or their correspondence or letter

3368 files or their inventories, either at the beginning or at the end of the accounting periods. I can't answer the question as to whether I examined all of the different sources which would disclose the exact nature of the Wrigley Company's advertisements during the account-

ing period. All I examined was the invoices available pertaining to advertising expenditures.

I presume there would be an order when the Wrigley Company ordered space either on a dead wall or on a bill board or in a street car or in a newspaper. I would expect that when they put posters on bill boards and cards in street cars, that the Wrigley Company gave orders for those posters and those street car cards or for the advertisements that appeared in the newspapers and in the magazines. I didn't look for them.

3369 I would expect that there would be bills of lading and shipping instructions given in connection with the advertisements that would be shipped out by the Wrigley Company to the various parts of the country where the advertisements were to appear either in newspapers or in street cars or on dead walls or in magazines or on bill boards. I made no such investigation to find those shipping orders or shipping instructions or the bills of lad-
(3163) ing or the letter files or correspondence.

As to whether I mean to say that, as a matter of fact, the Wrigley Company's files did not contain the information from which, if I had made an exhaustive examination, I could have ascertained all the particulars pertaining to their advertising expenses, I will say I don't know what their files contained, but I did not receive from the Wrigley Company anything pertaining to their files and advertising. I am not intimating that anything was denied that I asked for. I didn't ask for it.

3370 I examined the invoices with respect to these advertising matters. It is not entirely right to say that I did not find on them sufficient information for me to know what the designs of the advertisements were. I not only examined invoices, but I also saw the illustrations of advertisements which I was told by the employes of the Wrigley Company were the advertisements that that particular bill had reference to.

I also examined the working papers of Mr. Stanley, and I also made inquiries from the employes of Wrigley which I was in contact with as to any further information that would throw any light on it. I met Mr. Stanley. I have asked him for information. He never refused to give me any information I asked for.

Mr. Eckerly gave me all the information he said he
3371 had. Whether there was any information in letter files,

I don't know; but I had all the information they claimed they had on the matter I looked into. As to whom I asked for all the information that the Wrigley Company had on this matter, I will say I asked, in the first place, Mr. Ellis, who was taking care of the working papers and books and records that we are using, and he would
(3164) give me the information, and where he didn't know he would sometimes refer me to Mr. Stanley or even to Mr. Eckerly on the matter. I also asked Mr. Patterson for information. He took Mr. Ellis' place when Mr. Ellis was on his vacation.

I was disclosing to the Wrigley Company just what the nature of my investigation was. I was telling Ellis what I was after. I said, "I am over here to see where Mr. Stanley gets his figures from." And I would ask for
3372 specific things as I needed them. My custom was if I wanted to see a book or a contract, I would ask for it. They were always given to me if they had them.

As to whether I expected that the invoices would contain full particulars as to the nature of the advertisement, I will say I found them to contain particulars in some instances; in other instances not. As to whether, as an accountant, I would expect the invoices to give the particulars of the advertisement, including the design, I will say I would expect the invoice to contain a number by which I could refer to the design.

The invoices I am speaking about are not the same as what are known as bills for posting. The invoices I refer to are the printing and lithographing bills. They contained a number of particulars. As to what invoices didn't contain a number or reference to the design, I will say the services of bill posters. As an accountant, I
3373 think I would expect to have invoices of that kind show the design.

Before examining the Wrigley books, I never had occasion in my life to see or deal with invoices for services in connection with advertising. The invoices for services that did not show the nature of the design were intended to cover the payment of money for the putting up of
(3165) posters.

As to whether, so far as I saw any advertisements or photographic copies thereof, I found any errors in the amounts which the Wrigley Company charged therefor, I will say their mathematical calculations were correct

except in a few instances, as I said before. Where they were not correct, I am satisfied that the mistakes were purely clerical and unintentional.

I have said that, in my opinion, based exclusively on theory, the Wrigley Company's method of allocating its
3374 advertisements is incorrect. Suppose the Wrigley Company advertised three kinds of gum only, we will say Spearmint, Doublemint and Juicy Fruit, and suppose at the top of that advertisement appeared the name "Wrigley's," and then there was some general language that had reference only to the three brands of gum named, and suppose the name "Wrigley's" and this general language occupied exactly one-half of the advertisement, and suppose the remaining half of the advertisement was divided into three equal parts, one part of which had to do exclusively with Spearmint, the other part exclusively with Doublemint, and the other part exclusively with Juicy Fruit; suppose the whole advertisement cost $120; I will say that I understand in such a case the Wrigley Company charged $40 to each brand, $40 to Doublemint.

To take another illustration: Suppose the top half of that advertisement was exactly as I have stated, and suppose the lower half of the advertisement referred only to two brands, Spearmint and Doublemint, and suppose the space occupied specifically by Spearmint and that specifically occupied by Doublemint was the same; I under-
3375 stand the Wrigley Company allocated $60 to each brand appearing on the advertisement.

(3166) Suppose the Wrigley Company paid $120 for an advertisement, one half of which contained nothing except the name "Wrigley's" and general language having reference only to Spearmint and Doublemint, and suppose of the remaining half of that advertisement Spearmint
3376 occupied twice as much space as Doublemint did. In other words, that one-sixth of the whole advertisement covered the package and description of Doublemint only while two-sixths of the whole advertisement covered the picture and description of Spearmint only; I understand the Wrigley Company allocated that advertisement $80 and $40. $80 was charged to Spearmint and the $40 was charged to the brand occupying the lesser space. That's my understanding of the way that the Wrigley Company
3377 allocated both their printed and painted advertising.

As to what other kind of advertising the Wrigley Company did besides printed and painted advertising, I will say they had in their account under advertising an item of detail men; in other words by printed and painted advertising I mean all advertising that could be seen. The painted and printed advertising charged by Wrigley & Company to Doublemint on their account filed herein amounted to about $2,000,000. On page 5 of the Touche,
3378 Niven & Company report it is stated that the Wrigley Company paid out for advertising during the accounting period $6,363,082.11. That was for all advertising, including detail men and everything. That six million three hundred odd thousand dollars covers detail men.

In printed and painted advertising I include electric signs. I include newspapers and magazines, bill posting, walls, bulletins and electric signs and street cars. This advertising that can be seen that I have described, which
(3167) was charged to Doublemint, amounts to approximately $2,000,000.

I have seen one decree in this case ordering an accounting. As to whether it is my understanding that the decree
3379 entered in this case which directed the Wrigley Company to make an accounting required the Wrigley Company to allocate its advertising expenses on the basis of Doublemint sales to all sales, I will say I never considered it from any standpoint at all. I have no opinion at all on it.

I did not dictate any of the language used in the report filed by Touche, Niven & Company in this case, but I think that quite a lot of my language has been used in the report. I understand from the Touche, Niven & Company report that Touche, Niven & Company intended to base their conclusions as to the proper method to allocate the Wrigley advertising expenses on the decree which referred the case to Master Morrison and directed the account to be filed. I don't know when I first got that information. I got it before the Touche, Niven & Company report was filed with the Master; I don't know how soon before. I think I got it while the report was
3380 being prepared.

I did not dictate any part or write any part of Touche Exhibit 1 for identification, but parts of it, especially in regard to the advertising, seem to embody some of my

memorandums on the investigation. I mean some of my figures and some of my wording also. It looks familiar. None of it was dictated by me. I cannot state what was copied from any memorandum that I made, without getting my memorandum.

I made only one report on the advertising investigation, but it may be on separate pieces of paper. I am
3381 referring now to the document marked "Touche Exhibit
(3168) 24," being working sheets 841, 842, 843, 844, 845 and 846. I have seen Touche Exhibit 1 for identification before today. I first saw it when Mr. Vincent was working on it. I cannot recall when that was. I have seen Touche Exhibit 2 for identification. I think I first saw it around the same time. Touche Exhibit 2 for identification contains part of my language. I think it is almost a copy of Touche Exhibit 1 for identification. I did not see anything on Touche Exhibit No. 2 for identification that is in my handwriting.

Touche Exhibit 24, being working sheets 841 to 846,
3382 inclusive, are all in my handwriting. They were prepared at the time I was doing my investigation of the advertising, or as soon as I got through with it. As I finished each subject I took notes of it and this is the result of each one. In other words, after I finished the entire examination, I took the notes that I had made from time to time and from them I wrote out these sheets 841 to 846, inclusive.

So far as I know, in all my work connected with this Wrigley accounting I was following instructions received from my superiors. Up to this minute nobody has said anything to me that I didn't follow instructions.

3383 During all the time that I was working on this Wrigley matter I supposed that Touche, Niven & Company, so far as pertains to advertising, merely wanted to find out the total advertising expenses incurred by the Wrigley Company during the accounting period, and to find out whether the charges made by the Wrigley Company for advertising were actually incurred, and also how Wrigley & Company in their accounting arrived at the amount chargeable to Doublemint. There were two objects in view,
(3169) so far as my instructions went.

I can't recall I ever saw Touche Exhibit 7, headed "Memorandum for Mr. Whitworth." I have examined the document. I notice that the document purports to be

made on or about May 14, 1920, and shows that Touche, Niven & Company, when the document was prepared, knew how the advertising chargeable to Doublemint had been allocated by the Wrigley Company in their filed accounts. I was instructed to find out what method the Wrigley Company had adopted in allocating their ad-
3384 vertising expenses. As to whether it is my understanding that no one connected with Touche, Niven & Company knew before I made my examination how the Wrigley Company had allocated their advertising expenses, I will say I don't know what they knew. I reported to Touche, Niven & Company the method which I discovered was used by the Wrigley Company in allocating their advertising expenses. I was in constant touch with Mr. Vincent and reported to him almost daily what I was doing and how I was getting along.

After making these daily reports, I prepared Touche Exhibit 24, including pages 841 to 846. As to whether I had anything to do with the preparation of the document Touche Exhibit 4, being a document dated, "Chicago, November 9, 1920," "Memorandum for Mr. Whitworth," I will say some of the subject matter in these papers seems to be based on facts that I have reported to our office. I had nothing to do with the dictation of that exhibit.
3385 I don't know in whose handwriting is the pencil word "were" on page 1 of that exhibit. It is not my handwriting.

As to who was the first person that I heard say that the proper way for the Wrigley Company to al-
3386 locate their advertising was on the basis of Doublemint (3170) sales to all sales, in accordance with the decree, I will say nobody ever told me that that was the proper basis for the Wrigley Company to allocate their advertising. I have never heard that from any one at all, but I have seen some reference to it in our report. All that I know on the subject as to the distribution of the Wrigley advertising expenses and basis of sales is what I have seen in the Touche, Niven filed report. I have discussed with Mr. Vincent what the proper method would be for the
3387 allocation of Wrigley advertising, and perhaps with Mr. Whitworth. In those discussions neither of them expressed the opinion that the proper way of allocating the Wrigley advertising would be on the basis of Doublemint sales to all sales, in accordance with the decree. Nobody said

it was the proper method to use, but under the circumstances it was the best method.

3388 I have had conferences with Charles H. Aldrich. I don't recall when I first met Mr. Aldrich. It was not before I did any work on this case. It was not while I was examining the Wrigley books. I think I was all through before I ever met Mr. Aldrich. I met him for the first time at the office of Touche, Niven & Company. Mr. Whitworth, Mr. Vincent, Mr. Aldrich and myself were present. I could not say whether that was before or after Touche Exhibit 1 was prepared. I only saw Mr. Aldrich up there for about one or two minutes. I did not make any memorandum of the conversation I had with Mr. Aldrich. As to how many times I have talked with Mr. Aldrich before today, I will say I saw him yesterday here and saw him Monday and prior to that I think I saw Mr. Aldrich two or three times. One of those occasions was once in our office. And I have
3389 brought some papers up to Mr. Aldrich's office once
(3171) or twice, and then last Monday I was up in his office for a little while. As to whether I took up to his office at the time I took papers to him, the Touche Exhibit 1 or a copy of it, I will say I don't know what I took up. I had it in an envelope. I was the errand boy. I did not examine what I brought up.

I think that time when I had this conference, when I saw Mr. Aldrich in our office, he said something about law matters or something to that effect. He didn't say anything on the subject of advertising that left any impression on my mind. He may have said something, but I was only in there for a minute or two, as I say. I can't recall what he did say. I don't recall that he ever said anything to the effect that the report of Touche, Niven & Company should be to the effect that the proper way to allocate advertising was in accordance with the decree of reference, and thefeore on the basis of Doublemint sales to all sales. I don't recall Mr. Aldrich ever having made such a statement; at least I do not remem-
3390 ber ever having heard him speak about it, unless he has spoken about it during the last couple of days here.

Some of the handwriting in Touche Exhibit 3, which purports to be "Notes re Conference with Mr. Aldrich 12/3/20," is mine. The following is all in the exhibit

that is in my handwriting: "Show advertising as per method of Wrigley and also our way."

"Japan organization expense in overhead about $27,000."

"By instruction of counsel for Larson we have not figured salaries of Mr. Wrigley."

"Canadian dividends—Aldrich will write T. N. & Co.
(3172) in re this item."

"See *Western Glass* v. *Spurnd* interest on invested capital."

There are a good many notes on that same exhibit
3391 that are not in my handwriting; some in the beginning and some way down. There is memoranda in the exhibit between some of my memoranda which is in the handwriting of somebody else.

That exhibit refreshes my recollection as to the particular conferences that took place with Mr. Aldrich. I don't know when the conference took place, but it took place at the first and only time I met Mr. Aldrich at our office. I do not remember the date. I still say I was there for only two or three minutes—a very short time. Mr. Vincent, Mr. Whitworth, myself and Mr. Aldrich were present. There may have been somebody else around there, but I cannot now recall that anybody else was in
3392 there.

Referring to my writing on that exhibit, which reads, "Show advertising as per method of Wrigley and also our way," I don't believe I meant anything at all by the words "our way," so far as I can see here, and my recollection of the reason for the memorandum was probably Mr. Whitworth and Mr. Vincent told me "Mark this down on this piece of paper," and I marked it down, without knowing what it meant, because I see further down here it says, "*Western Glass* v. *Spurnd*," and I don't know what that has reference to, and I think I simply wrote it down because I was told to write it down. As to whether I have a present recollection that when I wrote those quoted words down there I didn't know what they meant, I will say I know what they meant, but it was not my ideas, or anything of that kind, that I was
(3173) writing down. I must have written it at somebody's dictation, not from my own knowledge.

3393 *Redirect Examination by Mr. Aldrich.*

At to whether I examined the books, ledger and entries on the books of the Wrigley Company with reference to advertising expenses, I will say I examined the books of the Wrigley Company pertaining to advertising expenses, and got out the invoices where and when available, to support those entires on the books.

(Mr. Aldrich then asked the witness whether, if he was able to verify, with the exceptions noted in the report, the expenditures of the Wrigley Company from the invoices and the books, it was necessary for the witness to examine the letters and the shipping directions, bills of lading, shipping receipts, correspondence, contracts and other papers mentioned by Mr. Mayer in his interrogations to the witness. Mr. Mayer objected to the question. The objection was overruled. The witness continued):

I considered those papers unnecessary for my purpose.

3394 *Recross Examination by Mr. Mayer.*

Even if my purpose was to find out the nature of each advertisement and the nature of each expense, I would not even then have dreamed it necessary to examine those different documents referred to in the question Mr. Aldrich just put to me in order to get complete information. The shipping receipt, or anything of that kind, would not disclose any information as to the nature of an advertisement. A contract might disclose some liability (3174) which had not been taken up on the books.

The purpose I had in mind in examining the Wrigley books was to see that they did not include in advertising any money that they did not pay out for advertising. In other words, I wanted to see that the advertising account as filed by the Wrigley Company with the Master was not padded, and that all the entries were bona fide entries. I wanted to see that the money claimed to have been paid out was, in fact, paid out; at least, that I had some addtional evidence besides their books to show that 3395 the money had been paid out.

As to whether, in making the examination, I intended to see whether they made any improper charges if their method of allocation was correct, I will say I intended

to see if the charges were proper. All I mean by proper is whether the charges represented moneys actually paid out.

(Mr. Mayer then offered in evidence the longhand report and typewritten report theretofore marked for iden-
3396 tification Touche Exhibit No. 1 and Touche Exhibit No. 2, respectively. The two documents so offered were received in evidence and marked "Admitted.")

(3175) Thursday, Feb. 16, 1922, 10:30 A. M.

3397 The following statement was put into the record by the master as covering certain proceedings had on said day:

"Mr. Aldrich interrogated Mr. Mayer with reference to investigation made by him or his client concerning the history of the Pulver package. A general discussion followed involving certain investigations and charges of bribery or attempted bribery, not connected, however, with the matter referred to the master, that was carried on to considerable length. None of it, however, amounted to testimony and it was all stricken out by the master on motion of counsel for the Wrigley Company as not being proper matter to go into the transcript. The master stated that if either side desired, the reporter would transcribe what was said between counsel for such use as counsel might see fit to make of it."

(3176) (Mr. Aldrich then filed a written motion to strike
3398 out of the record all of the testimony of L. P. Larson, Jr., called as a witness on behalf of Wm. Wrigley Jr. Company, and all exhibits and papers produced by said Larson in the course of his examination. The motion stated it was based upon the opinion of the Circuit Court
3399 of Appeals in cases numbered 2822 and 2831, which reversed the order of Judge Carpenter entered on March 22, 1920. Thereupon, at the suggestion of Mr. Mayer, the Master postponed ruling upon the motion and stated that he desired to pass on the motion before the Larson Company should close its case.

3400 (Mr. Aldrich then offered in evidence a verified bill dated Jan. 26, 1915 filed by the Wm. Wrigley Jr. Co. against the Toledo Chewing Gum Co. in the U. S. District Court for the Northern District of Ohio, Western Division in 1915. Mr. Aldrich stated that he made said offer to show that the Wrigley Company, after the con-

clusion of the Pulver matter and at a date subsequent to the time the Wrigley Company and its officers knew that they did not have the color scheme described in the bill against the Larson Company, proceeded against the Toledo Gum Company in a bill in which the Wrigley Company also claimed to own and to have initiated the said color scheme. Mr. Lane objected on the ground that the evidence was incompetent, immaterial and irrelevant and had no bearing on the issues before the Master. The objection was sustained, and the bill of complaint and decree in the case of *Wm. Wrigley Jr. Company* v. *Toledo*
(3177) *Chewing Gum Co.* so offered was not received in evidence but was marked "Larson Exhibit 133, offered, not admitted.")

3401 (Mr. Aldrich offered in evidence a bill filed by the Wm. Wrigley Jr. Company in the United States District Court, Northern District of Georgia, as complainant against Lewis N. Goodrich and John K. Goodrich, trading under the firm name and style of Goodrich Manufacturing & Operating Company, as defendants, in which the verification made by A. G. Cox, bears date January 14, 1914. He stated that it was offered for the same purpose as the Toledo Gum Company bill. Mr. Aldrich at the same time offered the decree in said Goodrich case. Mr. Lane objected, and the Master sustained the objection. Said
3402 copy of the bill of complaint and said decree in the case of Wm. Wrigley Jr. Company against Lewis N. Goodrich, et al. was offered in evidence by Mr. Aldrich but was not received in evidence. It was marked, "Larson Exhibit 134, offered, not admitted." Mr. Aldrich offered in evidence a verified copy of a bill, and under the seal of the Clerk of the court, filed in the United States District Court, Southern District of Ohio, Western Division, by Wm. Wrigley Jr. Company, a corporation, against the Helmet Company, a corporation organized under the laws of the State of Ohio, the verification of which he stated was under date of June 3, 1914. Mr. Aldrich stated that a decree was entered in favor of the com-
(3178) plainant on June 3, 1916, which is attested and con-
3402 tains the same averments as the other as to the Wrigley color scheme and package. Mr. Aldrich also said the offer raised the same question that was raised by the offer of Larson Exhibit 133. Mr. Lane objected to the offer and the Master sustained the objection. Said bill of com-

3403 plaint and decree in case entitled *Wm. Wrigley Jr. Company* v. *The Helmet Company,* so offered in evidence was not received in evidence, but was marked "Larson Exhibit 135, offered, not admitted.")

(Mr. Aldrich offered in evidence a certified copy of a bill filed by the Wm. Wrigley Jr. Company against James Goldnbak. Mr. Aldrich stated the bill was filed in the Northern District of Ohio, Eastern Division, and charged that it contained the same averments, alleged by Mr. Aldrich to be false as to the history of the Wrigley package; that it was verified by A. G. Cox under date of December 18, 1913. Mr. Aldrich also offered a certified copy of the decree in said case. Mr. Lane objected to the offer. The objection was sustained. Said bill and decree in the case entitled *Wm. Wrigley Jr. Company* v. *J. Goldnbak* was offered in evidence by Mr. Aldrich, was not received in evidence, but marked "Larson Exhibit 136, offered, not admitted.")

3404 (Mr. Aldrich offered in evidence a certified copy of the bill filed by the Wm. Wrigley Jr. Company against A. Colker, in the United States District Court for the East-
(3179) ern District of Kentucky, together with a certified copy of the decree therein and a certified copy of another bill filed in the same court, together with the decree therein. The first bill, Mr. Aldrich stated, was verified under date of June 30, 1915, and the second bill was verified by A. G. Cox of the Wrigley Company on October 18, 1913. Mr. Lane objected to the offer and the objection was sustained. Said two bills and two decrees in case entitled *Wm. Wrigley Jr. Company* v. *A. Colker,* so offered in evidence by Mr. Aldrich, were not received in evidence but were marked "Larson Exhibit 137, offered, not admitted.")

3405 February 27, 1922.

10:30 o'clock A. M.

CHARLES R. WHITWORTH, resumed the stand for further cross examination by Mr. Mayer:

The Witness: When I informed Mr. Vincent of the general character of the investigation that was to be made in this Wrigley matter and what the purpose of it

was I told him we were expected to ascertain the profits derived from the sales of Doublemint for certain periods. There was a condition that had already been accepted by counsel on both sides to the effect that the sales and the cost of sales were already agreed upon, and it was therefore unnecessary for us to investigate that
3406 any. So that in the main our investigation was to verify the overhead expenses so called as contained in the account filed by Messrs. Wrigley & Company.

At that time I had no information from Mr. Aldrich as to what his views were with respect to the account that had already been filed by the Wm. Wrigley Jr. Company
(3180) before the Master. I don't think we had any views at all. I can't answer when I first learned of any of Mr. Aldrich's views on any matter pertaining to this pending accounting. We knew his views before we filed our report in this case.

I have before me Touche Exhibit 10, being a copy of Mr. Aldrich's motion addressed to the Master, requesting him to lay down certain rules applicable to the accounting, purporting to be supported by a memorandum
3407 of authorities. In my judgment, the writing in red pencil on the top of that document, "Received October 7, 1921," is inVincent's handwriting. I except I saw that document or a copy of it before I filed my report with the Master. We presented the report to Mr. Aldrich October 25th. Before we filed our report with the Master, that is, Larson Exhibit 132, I had also examined a
3408 copy of the report made by Marwick, Mitchell, Peat & Company and dated Chicago, June 17, 1920, and addressed to Master Morrison, and I had studied it, and I used some portions of it in the preparation of our own report. Those portions used are mentioned in our report. I cannot answer the question as to whether in every instance we used the Marwick, Mitchell, Peat & Company report we stated so in our report. I did not personally verify the figures in the Marwick, Mitchell, Peat & Company report. I don't remember that I have ever heard of any mistakes being found in that report of Marwick, Mitchell, Peat & Company.

Before we filed this report I knew that the L. P. Larson Jr. Company was seeking to recover moneys from the Wm. Wrigley Jr. Company, and I knew that we were employed with a view of seeing that the Wm. Wrig-

3409 ley Jr. Company's account filed with the Master did not deduct from the receipts from Doublemint gum any more or larger sums than we thought were proper. I (3181) knew that part of our employment was to see to it that the amounts found to be the profits earned by the Wm. Wrigley Jr. Company during the accounting period were as large as they could properly be made.

I did not know that Charles H. Aldrich had a financial interest or claimed to have a financial interest in any decree for profits that would be entered in this case. When I wrote this report, I didn't know that he had taken this case on a contingent fee. I don't know when I first found that out. I don't know whether it was before or after I first wrote this report. I think it was after.

3410 I had never done any business before for Mr. Aldrich or for Mr. Frank F. Reed, or for any of their clients, so far as I know. I had never done any business before for L. P. Larson Jr. Company. Our fees were paid by L. P. Larson, but we were appointed by the court. I know from Mr. Aldrich that we were appointed by the court. I was present here when the application was made for our appointment, as I remember it. I did not say the 3411 court selected me. I understood the appointment was made by the Court. I got my understanding that I was appointed by the court through Mr. Aldrich. By the court, I refer to Master in Chancery Morrison. I did not understand that Master in Chancery Morrison or the court were to see to our remuneration. We were advised that the bills would be paid by L. P. Larson & Com- 3412 pany. My memory is that Mr. Aldrich told us that. I don't know whether this was a very large employment.

I am a resident partner of Touche Niven & Company. As to whether I mean to say that I have not any definite knowledge as to who it was that employed us and who (3182) it was that promised to pay us I will say I look to my records. I don't see that it has anything to do with this case anyway. It does not make a bit of difference 3413 which side of this case wins. I would like to make a statement here that we were stating the facts and will stand by them. Our bill has been paid so far as rendered by Larson & Company.

As to whether it is a fact that we were employed by parties who bought an interest in this litigation, I will

3414 say not that I could positively say. I said we were employed by Larson & Company. I think that Mr. Hoyt of Little, Hoyt & Company introduced me to Mr. Aldrich, if I remember now. As to whether Mr. Hoyt told me that his firm had bought an interest in this litigation, I will say not that I remember; in fact, I don't believe he did. As to whether it is my understanding that they are interested in this litigation, I will say I don't know that they are. They are financial agents. I have not heard that they have advanced moneys to L. P. Larson Jr. Company so as to enable them to carry on this litigation
3415 and for that purpose. I don't know what I have heard on that subject. But as to whether I am willing to state that I have not any information to the effect that Hoyt, Little & Company are interested in the outcome of this case, I will say I know they are stockholders and to that extent they must be interested, but I don't know to what extent they have rendered financial aid. I don't know that they bought an interest in the outcome of this case and that the method adopted by them for doing so was either to use or lend money.

3416 As to whether, where you are seeking to ascertain what the profits are of a business during a given period, a payment made in a prior period cannot be taken into
(3183) consideration in ascertaining those profits, merely because it is made in a prior period, would, in my opinion as an accountant, depend upon circumstances. If such a payment were made to discharge a liability incurred for the purchase of a business, I will say as to the propriety of taking such a payment into consideration in determining the profits, that it has nothing whatever to do with the profits. It should not be charged in any event in any period.

3417 Suppose a merchant bought out a business and procured the assets of that business and also an agreement by the vendor not to go into a competing business for, say, five or ten years thereafter, and suppose the payments were to be made by the vendee to the vendor in equal installments covering, say, five or ten years. If I wanted to find out what the profits were of that business during some years subsequent to the purchase of that business, I would not take into consideration some of the partial payments made during the accounting period.

As to whether, as an accountant, I think that where a

merchant buys out a business the amount paid should be capitalized, I will say yes, the amount that he pays for the investment is capitalized.

As to whether there are any instances in which the purchase of business should be written off in installments over a term of years instead of being capitalized, I will say that's a difficult question to answer. It would depend upon whether those were fixed assets or liquid
3418 assets. Supposing they were intangible assets, like the good will of a business, I will say the generally accepted practice—of course I am speaking of what I think is the generally accepted practice—is that any payment on account of good will always remains as a capital in-
(3184) vestment and it should not be written off unless by a special resolution of the directors or stockholders. It is not necessary from an accountant's standpoint to write that off.

As to whether I would regard it as bad accountancy to spread such an expense over a number of years, say five or ten years, I will say it would be looked upon as ultra conservative.

If the business I bought was scrapped immediately upon its purchase and the object of the purchase was to put a competitor out of the way, I would not say it would be bad accounting practice to spread that disbursement over a number of years, but it is not generally done.

Referring now to that part of my filed report, Larson Exhibit 132, which deals with the item of "Brooklyn moving expense," amounting to $112,370.82, I would have rendered the same conclusion as I did if the Wrigley Company had taken possession of the new building dur-
3419 ing the accounting period. I don't know that we should have come to the same conclusion that we reported to the court if the Wrigley Company had not filed a claim against the Navy Department for losses arising from the cancellation of the Naval order.

To some extent, in my opinion, the proper conclusion to be reached by the Master here in determining whether the Brooklyn moving expense is a proper deduction or not is dependent upon the outcome of the claim filed by the Wrigley Company against the Government. The claim was in abeyance when I made my investigation, and I have made no other inquiry since. I assumed in arriving at the conclusion that we reported to the Mas-

ter that the Wrigley Company's claim against the Government would be allowed.

I concede the right and propriety of the Government in war to take private property without any prior con-
(3185) demnation proceedings or ascertainment of damages.
3420 I also concede the propriety of a manufacturer whose property is taken by the Government during a war of immediately seeking other quarters for the conduct of his business. Under ordinary circumstances also I concede that whatever expenses are incurred by the manufacturer whose property is so taken by the Government in preparing other premises for the conduct of the business are properly deductible in ascertaining the profits of that merchandise.

As an accountant, I am of the opinion that some proper allowance should be made by a manufacturer for depreciation of buildings in ascertaining profits. That is true, whether the buildings are used for warehousing purposes or office purposes or factory purposes or any purpose used in the conduct of the business. So in the present accounting, it is my opinion, as an accountant, that the Wrigley Company should be allowed a deduction
3421 for depreciation and for the factory buildings. If no such deduction had in fact been made in the account which they filed, I would regard it as equitable that an allowance should be made for such depreciation. If the cost of manufacture has been agreed upon in the case on hearing, that is, agreed upon by both sides, I would expect that a deduction had in fact been made for depreciation of factory buildings. If, as a matter of fact, no such deduction has been made, then, in my opinion, it should be made.

On page 4 of my report on the subject of depreciation of building I said:

"The item of depreciation of buildings, amounting to $18,564.90, should be disallowed for the reason that any
3422 provision for depreciation of factory buildings is chargeable to cost of manufacture, and since the cost of
(3186) manufacture has been agreed upon, this item should be eliminated from overhead expenses."

I wish to be understood by that report as saying that the mere fact that the cost of manufacture has been agreed upon, that therefore no allowance should be made for depreciation of buildings if in fact none has been

deducted. I think where they had accepted the cost of manufacture, any element that should not come into the other overhead expenses ought to be eliminated. I look upon that as a sort of a bargain that had been made. If it were not a matter of agreement, I would say that under
3423 ordinary circumstances there should be a deduction for depreciation of the factory buildings. In my opinion as an accountant, it is proper accountancy practice where members of a copartnership receive salaries pursuant to an agreement to charge those salaries to expense. In that way the profits of the concern are diminished to the extent of those salaries.

If the manufacturing institution is a corporation, it is proper accountancy practice to charge to expenses the salaries paid to the officials. So long as the salaries are reasonable, that's done with the officials exactly the same as salaries paid to stenographers or clerks or superintendents. As to whether it is for the accountant to determine the reasonableness of it or for the owners of
3424 the business, that depends upon the circumstances. I know a circumstance where it is the business of somebody else besides the owners of the business to determine what the officials of the business should be paid. The United States Government determines what are reasonable salaries in many cases, for the purpose of determining the profits of the business or, rather, for the purpose of determining the taxable profits. The determina-
(3187) tion by the Government of the taxable profits has nothing to do either by way of increasing or decreasing the amounts paid the officials of a corporation as between those officials and the corporation itself. So I concur in the opinion that in determining the profits of a concern, whether it be a corporation or a partnership, salaries actually paid to the partners or to the officials, if it be a corporation, are properly deductible in order to ascertain what the profits are.

3425 In this particular case on hearing we rejected as a proper item for deduction some $328,750, compensation paid to Wm. Wrigley Jr. as president of the company, entirely on the advice of counsel. Except for that advice I don't believe we would have recommended the exclusion of that item.

On page 4 of our filed account, while discussing the question of interest received by the Wm. Wrigley Jr. Company, it is said that:

"In view of the fact that, as we understand it, the Larson Company is entitled to interest on profits from the close of the infringing period only, it would appear to be reasonable that all interest earned on money loaned should be apportioned on the same basis as expenses, i. e., on the basis of relative sales, and we have so treated it."

As to how I think as an accountant interest received by the Wrigley Company during the accounting period should be apportioned if as a matter of fact or a matter of law the Larson Company is not entitled to interest on profits from the close of the infringing period only, I will say there might be some question as to whether the interest would be credited at all to profits, the interest be-
3426 ing possibly extraneous to the business or to the capital that was employed in Doublemint.

I will answer the last question this way: I think the
(3188) interest should be credited to the profits, included in the profits. I cannot answer the question what kind of apportionment such a credit would result in. In such event I would not include interest on the invested capital.

Supposing the Larson Company is entitled to interest on profits only from the date of the Master's report, as to what those profits are, I cannot answer offhand how I think interest earned on money loaned by the Wrigley Company during the accounting period should be apportioned.

3427 I have had experience as an accountant in allocation of the cost of advertisements incurred by manufacturers handling numerous products and where the advertisements covered only a part of the products. I have had several years of experience where I have met with that problem on many occasions. I don't know that I have ever been connected with any similar proceeding to this case. I cannot answer the question as to whether this is the first court case of this type that I have ever been interested in which involves an allocation of advertising
3428 expenses to determine profits.

I did not personally examine any of the Wm. Wrigley Jr. Company's orders for posters or street car cards or bills of lading or correspondence pertaining to those matters. I had very little to do with the examination of the Wrigley Company's records pertaining to advertising. I don't pretend to have personally made any suf-

ficient investigation to ascertain what is on the Wrigley Company's records pertaining to advertising.

I have had experience as an accountant in connection with United Profit Sharing coupons. I had such an experience prior to the case now on hearing.

(3189) (Mr. Mayer then asked the witness for whom. Mr.
3429 Aldrich objected. The objection was sustained.)

I regard the question as to what is the proper percent to allow or deduct for contingent liability on account of the United Profit Sharing Coupons issued by the Wrigley Company as a question of accountancy and not one of law. I understand that every time the Wm. Wrigley Jr. Company sells a package of five sticks of Doublemint gum they are issuing a coupon that is redeemable for one-fifth of a cent or its equivalent. I don't understand
3430 that that is an actual fixed liability on the part of the Wm. Wrigley Jr. Company. It is my understanding that the coupon, if presented, is an unqualified obligation on the part of the Wm. Wrigley Jr. Company to redeem the coupon. I understand that the Wrigley Company was under that liability during the entire accounting period. I have no way of definitely knowing what percent of the coupons issued by the Wm. Wrigley Jr. Company during the accounting period will be redeemed. Any opinion I might have on that subject would be entirely conjectural and speculative.

3431 As to whether, as an accountant, I regard it as proper accountancy practice for a merchant to keep a contingent liability account when he is under a contingent liability, I will say it depends upon the nature of the contingent liability.

In the case of the coupons issued by the Wm. Wrigley Jr. Company, it is proper accountancy practice for the Wm. Wrigley Jr. Company to keep a reserve on account of the contingent liability. I know what the practice is of some other concerns dealing with coupons or similar obligations with regard to the setting up of reserves for
(3190) contingent liabilities. I know how such concerns base their percentage of the actual liability they set up for contingent liability. I cannot say that I know what the percentage is, but I know how the percentage is based.
3432 I don't know what the percentage values are, but I know how they arrived at the percentage.

As to whether I wish to be understood, as expressing

an opinion that there are no circumstances under which parties issuing coupons or similar liabilities would be justified in setting up a reserve amounting to as much as fifty per cent of the coupons issued, I will say I cannot answer that question.

As to whether I made any investigation or study at all of the expense of the Wrigley Company's advertising before Doublemint was put on the market, I will say I cannot answer that question. I don't remember now offhand when Doublemint was put on the market. I can't answer the question because I don't know. We didn't look into the sales of the Wrigley Company at any period back of the accounting period. I made no investigation
3435 as to the Wrigley Company's advertising prior to July 28, 1914 of products other than Doublemint gum. I made no investigation of the sales of the Wrigley Company prior to July 28, 1914.

I made no investigation of any kind as to whether or not Doublemint gum started with a good will because of prior advertising by the Wrigley Company of its other products.

I consider good will which an institution might procure through advertising as a profit.

3437 February 27, 1922.

2 o'clock, P. M.

The Witness: In my opinion, the question as to whether interest should be allowed on invested capital
(3191) in order to determine profits is a question of both accounting and of law. As I understand the law on the subject, it depends on the circumstances.

If the problem is to ascertain the profits made by a merchant during a previous year in order that those profits may be paid over to some third party, I under-
3438 stand there are various decisions as to whether interest should be figured on the capital invested. In some cases it has been allowed and in some cases it has been disallowed. In other words, I understand the courts disagree on that question.

Looking at the matter, not as a question of law, but as a question of accountancy, and independent of any lawsuit, I don't think accountants differ on the question as to whether interest should be calculated on capital

invested in order to ascertain what the profits are. In the conclusion which I reached in the report I filed with the Master I assumed that the Wrigley Company had no additional capital in their business beside what they would have required if they had not been making the Doublemint gum. We made no investigation as to whether or not the Wrigley Company acquired any additional investment or facilities, because of their manufac-
3439 turing Doublemint gum.

If a manufacturer has a plant in which he is manufacturing an article, which we will call A, ceases to manufacture that article and then begins to manufacture another article, which we will call B, and which infringes upon someone else's article, I don't think the plant is any less an investment for the manufacture of the infringing article B than it would be if a new plant had been purchased to manufacture B. In the case supposed I would treat the plant that the manufacturer already owned and used before he began the manufacturing of
(3192) the infringing article as an investment used in the infringing business.

As to whether we made any investigation or caused any to be made as to what patents the Wrigley Company was using during the accounting period, I will say I cannot answer that question. I would have to consult Mr. Vincent. I cannot answer the question as to whether we made any investigation or caused any to be made as to whether the Wrigley Company were using any patents in connection with the manufacture of Doublemint gum during the accounting period. I would have to refresh
3440 my memory on that. I don't remember whether I assumed in preparing my report which was filed with the Master that the Wrigley Company's patents were not used in the manufacture of Doublemint gum during the accounting period.

In my opinion as an accountant, a merchant should make a deduction for depreciation of patents used in his business in order to ascertain his profits. It should be amortized over the life of the patent, which is seventeen years generally, or unless it may have had an unexpired portion at the date of the examination.

3442 I base my conclusion on page 18 of my report to the effect that there is no justification for charging any interest on capital invested in or depreciation of patents

and patent rights for the reason that was stated in the report. That's the main reason. I may have had some
3443 other reasons at the time. I have not them in mind at present, but there may have been some other reasons.

This present hearing is the first experience I have had on the question as to whether in such an accounting as is now before the Master an allowance should or should
(3193) not be made for income and excess profits taxes. As to whether the conclusion that I have expressed in my filed report on the subject of income and excess profits taxes would be the same if the Government should so alter the tax laws that in my opinion the Larson Company would not have to pay any taxes on whatever profits they might be paid by the Wrigley Company, I will say I think that's a question of law. If the Larson Company should be required by the Government to pay some tax upon such profits as it may recover from the Wrigley Company, it is not necessarily for that reason that I think the Wrigley Company should not be permitted to make the deduction.

If a merchant has two factories, in one of which he manufactures Article A and in the other he manufactures an article which we will call B, it is not my understanding that he must make the same amount of profits in each factory, or that he should make relatively the same
3445 amount of profits in each factory. It is not my understanding that where a manufacturer manufactures a number of products that the profits on each product must always be the same as on all the others. The fact that a manufacturer makes larger profits on nine articles is no criterion at all as to whether the tenth article made by him is manufactured at a profit.

If I was in business for a period of time during which I had accumulated a stock of merchandise, accounts receivable, bills receivable, cash on hand, plant, factory, and after I had been in that business for a few years I was going to take in a partner, as an accountancy proposition, I would want an inventory to be made of the assets on hand and a list of the liabilities at the time this new firm was being organized. That would be necessary,
(3194) from an accountancy point of view, in order to ascertain the future history of the business as to whether it was losing or profitable.

3446 As to how I would come to value the plant from an

accountancy point of view in such a case, I will say sometimes they would make an appraisal, sometimes they would take cost less depreciation. The more customary way at the present day is probably to have an appraisal made. I would employ an appraiser to appraise the plant and equipment, but not the stock. The purpose of that would be to ascertain what was contained in the plant and what its actual value was. By the expression "actual value" I mean what the reproductive value less
3447 depreciation was, or what its sound value was as it is generally known. That's another way of saying what its then value was. The value might be more or less than what it originally cost me. In other words, I might have bought the land ten years before for five thousand dollars, and if it had enhanced in value so that it was worth one hundred thousand dollars the date I was taking in the new partner the land would be valued at one hundred thousand dollars.

Taking the accounts receivable and bills receivable, as an expert accountant I would seek to ascertain what their actual value was on the date of the commencement of the new copartnership, and to determine that I would want to consider who the debtors are and what their financial standing is and all matters that would throw any light upon the then value of the accounts or bills receivable.

3448 When it came to the merchandise, I would have that valued, or there would probably be an arrangement as to what price would be taken. If there was not any agree-
(3195) ment on the subject of merchandise at all and I was asked as an expert accountant what was the proper way to value the merchandise, I would say to take it at cost or market, whichever was lower.

3451 I believe the proper thing to do, if I had been running this business for a number of years and was about to take in a partner, would be to turn in my assets at their actual value; and that's true whether I am referring to physical assets like plant or machinery or equipment or accounts or bills receivable or merchandise, under ordinary circumstances.

3452 Suppose I had been operating a business as the sole owner for a number of years, say from 1910 to 1922, and I was still operating it, and then a court came along because of a dispute I had been having with some one else and decided that the profits I made in the year 1915 be-

longed to the other person and that I must account for those 1915 profits to that other person, in order to ascertain those profits that I was now required to pay to a stranger, I would want to know just how much I spent in running the business during 1915. If I assumed that that business was a manufacturing business, I would have to find out what it cost me to manufacture in that year, and I would include in that cost the moneys that I had paid out for labor and for merchandise.

Suppose I had on hand on January 1, 1915 some merchandise that was then worth a million dollars; that is, it
3453 would cost me that to replace it, and I used that merchandise in 1915. If that material which I had on hand January 1, 1915, which I used up in 1915, was fairly, reasonably worth in the market on January 1, 1915, one million dollars, I would charge that amount in making up my account of profits.

(3196) Suppose some one who had bought goods from me in 1914, to be paid for in 1915, failed in 1915 so that the whole account was a loss—we will say it is a thousand dollars. As to whether I would deduct that thousand dollars in arriving at my 1915 profits, it would all depend at what value it had been taken at the beginning of the year. Assuming that the account was suposed to be good on January 1, 1915, under ordinary circumstances I would
3454 deduct it from the 1915 profits. I should add, though, that when you take profits over several years that it is customary in an accounting to distribute the losses into the year in which the transaction belongs and not when it occurs; that's the general practice of all accountants.

As a matter of fact, where you are asked to ascertain what the profits have been of a concern for a period that is gone by, in order to pay over those profits to a third person who was not connected with the firm at all, you have got to go through all of the accounts for the purpose of finding out just what the concern had at the beginning of the accounting year and what it had at the end of the accounting year, what the value was of the property that it started business with at the commencement of the accounting year and what the value was of the property that it had at the end of the accounting year. In arriving at those figures you are not necessarily controlled by the values upon the books. Valuations put upon the books of a merchant in the due course of his business

may be entirely different from what they ought to be if you are called upon to determine what profits that merchant made.

I have no recollection of seeing the report made by Edward R. Burt & Company March 26, 1919, and addressed to Charles H. Aldrich, and now handed to me, or
(3197) a copy of it.

I have had no occasion to study the United Cigar Stores' method of doing business and their experience with their coupons. The only study that I have had is in observation of the way they hand them out over the counter; I mean my own personal experience; nothing of the company's experience.

I testified this morning that I studied the Marwick, Mitchell, Peat & Company report presented to the Mas-
3456 ter. I don't recollect having discussed that report with Mr. Aldrich before I filed my report with the Master, or very many parts of it either. I mentioned to Mr. Aldrich the Marwick, Mitchell, Peat & Company report before I filed my report with the Master. Whether you would call it a discussion is another matter. I did talk to Mr. Aldrich about the Marwick, Mitchell, Peat & Company report or some parts of it before I filed my report with the Master.

I don't think I have discussed any of these matters pertaining to the Wrigley accounting with anybody other than Mr. Aldrich, Mr. Vincent, Mr. Freeman, Mr. Niven
3457 and our employes. I have also discussed these matters with Mr. Larson. Hoyt, Little & Company also asked me one or two questions about these matters—how we were getting along—but I don't think I discussed it in the meaning of the word "discussed." I didn't talk with anybody else about these matters that I can remember.

Redirect Examination by Mr. Aldrich.

I signed Larson Exhibit 132.

3458 The general practice of basing the reserve for profit sharing coupons is upon the past experience of the manufacturer; that is to say, they determine how many have
(3198) been redeemed in the past and find out what percentage that may bear to the total amount and calculate a reserve on that basis for the ones which may be anticipated in the future. That is the practice adopted in my

filed report. I said that after testing Marwick, Mitchell,
3459 Peat & Company's preliminary report on the subject of Profit Sharing Coupons and convincing ourselves that the figures were correct, we took that as a true exemplification of the experience of the Wrigley Company for the period; in other words, that the figures were right. That's all I mean.

My opinion was asked as to how I would ascertain the profits on a business for the year 1915, if the person against whom the accounting was sought had on hand merchandise that was worth at the beginning of the accounting period one million dollars, which was consumed
3460 in the manufacture during the year 1915. I will say that if it was shown that the merchandise cost the party who had infringed but five hundred thousand dollars, I would not give the infringer credit for the million dollars that the goods were valued at at the time they were used, but I would take what the goods cost him, five hundred thousand dollars. When the question was asked me before I assumed that the cost and the worth were synonomous terms.

I have had other occasions besides this case to consider the allowance of income and excess profits taxes. I understand there are treasury regulations of a payment by a person who is held to be an infringer.

I am familiar with form blank 50 providing for the claim of refund in the case where a man has been com-
3461 pelled to pay. I did not say in so many words that I did not think accountants differ as to the question of
(3199) interest on capital. My statement was with regard to a hypothetical case. It was a hypothetical case to which I answered that I did not think the accountants would differ. There probably might be a difference of opinion among accountants independently of any question of a lawsuit on the question of interest on capital in ascertaining profits. In my opinion, the question of whether such interest should or should not be considered would be dependent upon the circumstances of the individual case.

3462 The extent to which I have talked with Little & Hoyt about this accounting is, they asked me how we were progressing on one or two times, and I think also, I also recall that they called me up one day and asked me about whether our report was completed or if they could have a

copy or they asked about some figures of the report to which I replied that they would have to get any information concerning that report from you. I did not give them a copy of the report. Little & Hoyt were not my employers or furnishing money to make payments to me for my services. My method of procedure with reference to payments to me was, I would send bills primarily to Mr. Aldrich to get his O. K. on them and then I would send them to the L. P. Larson Jr. Company which would send me a check. I have never been informed or had any reason to believe at any time that any of the money I have received from time to time in the payment of my
3463 account came from Little & Hoyt.

As to whether I think there can be any capitalization of good will purchased that is scrapped and abandoned, or whether there is any good will under those circumstances, I will say it might be described as good will if they paid for the properties; that is, it might be de-
(3200) scribed as good will if it was the cost of the properties and they might have any particular tangible value, it is often called good will.

3464 Some time between two and six weeks ago Mr. Aldrich asked me to make a comparative investigation of the good will of the Wrigley Company existing prior to the accounting period and the good will as it stood at the end of the accounting period. I think it was since I filed my report in this case. We were not requested by Mr. Aldrich or anybody else connected with the Larson Company to make other than a true, fair account in this matter.

As to whether or not I received, prior to October 7, 1921, requests of the Master which Mr. Aldrich made in October last for instructions to Marwick, Mitchell, Peat & Company with reference to their report, I will state
3466 not to my knowledge. My report had been in all substantial respects drafted a long time prior to the receipt of that request of the Master.

Mr. Aldrich was present at an interview between me and Mr. Vincent and at which Mr. Hagberg was present part of the time in December, 1920, at which there was present the first copy of my report.

3467 I have stated that as an accounting matter I could usually and as a matter purely of accounting include the salary of officers as a part of the expense of the company.

I omitted Mr. Wrigley's salary for the accounting period upon the request of Mr. Aldrich.

I have had occasion to consider the allocation of advertising expenses in other than accounting cases as a matter of accounting practice. As to what the practice
3468 is in allocating advertising expenses where there are a few articles or departments specifically in the advertis-
(3201) ing and the rest of the advertising is a general advertising of the institution, I will say some expenses that belonged to the department would be charged to them and those that were general or belonged to the institution in general would be pro rated over all the departments.

I examined Hagberg's working sheets with reference to the advertising of the Wrigley Company. I do not consider my report based on the experience of the Wrigley Company as derived from Marwick, Mitchell, Peat & Company's figures conjectural and speculative as to the redemption of profit sharing coupons.

3469 *Recross Examination by Mr. Mayer.*

In answer to Mr. Aldrich's question I said that I based my conclusions as reported in my report filed with the Master with respect to the contingent liability created by the issuance of United Profit Sharing Coupons, on the practices of others. Mr. Mayer then asked the witness "whose practices did you base those conclusions on" and the witness replied "I don't think I have to answer that question". Mr. Mayer then said that he does not think that the Master can take the opinion of this witness based upon the experience of others and then shut the door and hold that the Wrigley Company could not cross examine him as to who those others are; that maybe there were no others, and if there were, maybe their experience is not as the witness says, and that the witness is giving his conclusion based upon what he says is an experience of other people which is necessarily hearsay; thereupon the witness said "Amongst others, the treasury department confirms that practice".

(3202) (Mr. Mayer then asked the witness as to whose experience besides the treasury department the witness was relying upon in forming the conclusions regarding the
3470 U. P. S. reserve contained in the Touche, Niven & Co. final report. Mr. Aldrich objected to this question, as

immaterial and irrelevant. The Master then said he would strike out the witness' answer to the previous question. A discussion took place, and the objection was
3471 overruled. The witness then answered: "I am not authorized to disclose the names of these people". The Master then said as the witness took that position he was going to strike out his answer to Mr. Aldrich's question appearing on page 3458 and 3459 of the record wherein the witness had undertaken to state what the general practice with regard to setting up a reserve for profit sharing coupons was.)
3472 I don't know anything about this subject of U. P. S. coupons except for those with whom I am doing business. directly. The witness was then asked by Mr. Mayer "for how many different clients have you had experience with
3473 respect to the issuance of coupons, United Profit Sharing coupons, to which the witness replied "I don't think I am required to answer that question either". The Master then said that he saw no reason why the witness could not give the number. The witness then said: "I
(3203) don't know how many different clients I have had experience with with respect to the issuance of coupons, United Profit Sharing Coupons. I can think of three of four now. I don't know how much the United States Government allowed any of my clients or anyone else for reserve on account of the issuance of the United Profit Sharing Coupons. The reason I said that I based my answer as to what the proper per cent for contingent reserve was upon the general practice of the trade and
3474 upon the Treasury Department regulations was, I know that the general practice of the trade is to base their reserve for the United Profit Sharing Coupons on their past experience. I don't know what percentage is allowed by the treasury department, and I don't know what per cent of reserve was set apart for U. P. S. coupons by a single one of my clients. I don't know that the United States Treasury Department allowed the Wm. Wrigley Jr. Company a reserve based on sixty per cent. I do not know that the United States Government allowed the Wm. Wrigley Jr. Company in reporting its profits to deduct as a reserve on account of outstanding United Profit Sharing Coupons sixty per cent of the amount of those issued. If the United States Treasury Department did permit a sixty per cent reserve, that would not alter

the conclusion which I filed with the Master as to what
3475 is a proper reserve. I don't think the Wm. Wrigley Jr. Company should be allowed to deduct 34% for that reserve. 33½% is more or less in agreement with the amount that we said they would be entitled to deduct. I don't think 33⅓% or 33¾% would be excessive. When the witness was asked whether he thought 33.90% would be excessive he said "I don't think I have to answer this any more. It is getting down to a question of arithmetic, Mr. Mayer."

3476 I do not mean in any answer that I have given in any
(3204) of my prior testimony to say anything further than that in my opinion the amount that can properly be set up for a reserve for contingent liability on account of outstanding U. P. S. coupons should be measured entirely by the past experience of the particular company that issues those coupons. I ignore in my opinion and in my conclusions the experience of companies other than the Wrigley Company. My conclusion that 33 1/3% would be an ample amount to set up for a reserve would not be influenced at all by the fact that some of these coupons may come in ten years after they are issued. I would not change my opinion if I knew the coupons issued twenty years ago by other concerns were still coming in. I would not change my opinion if I found that other concerns that had issued coupons or trading stamps redeemed over seventy-five per cent of their issues. My
3477 conclusions would not be affected by the experience of any other persons issuing coupons or trading stamps under substantially similar conditions as the Wm. Wrigley Jr. Company. My understanding is that the United States Government in determining what should be a proper reserve to be set up against issued coupons is guided in each instance by the past experience of the particular company, regardless of the experience of other companies.

I was familiar with Article 8 of Regulation 45, 1920 edition, relating to the income tax and war profits and excess profits taxes issued, the Revenue Act of 1918, which provides as follows:

"Where a taxpayer for the purpose of promoting his business issues with sales tax stamps or premium coupons redeemable in merchandise or cash, he should in computing the income from such sales subtract only the

amount received or receivable which will be required for the redemption of such part of the total issue of trading stamps or premium coupons issued during the taxable
(3205) year as will eventually be presented for redemption. This amount will be determined in the light of experience of the taxpayer in his particular business and of other users engaged in similar businesses. The taxpayer
3478 shall file for each of the five preceding years or such number of the years as stamps or coupons have been issued by him, a statement showing (a) the total issue of stamps during each year, (b) the total stamps redeemed in each year, and (c) the percentage for each year of the stamps redeemed to the stamps issued in each year. A similar statement shall also be presented showing the experience of other users of stamps or coupons whose experience is relied upon by the tax payer to determine the amount to be subtracted from the proceeds of sales."

I do not care to correct any of the testimony that I have given in view of that regulation. That regulation was in force during the accounting period. As a matter of fact, I know the William Wrigley Jr. Company's books set up a reserve of sixty per cent for this liability. I don't know that the United States Government approved
3479 of that. I never made any investigation to find out.

In my opinion, the conclusion which I reached is definite and accurate where I take as the basis of determining what is a reasonable per cent of reserve the past experience of the particular merchant, irrespective of the experience of all others similarly situated, in my opinion, 33 1/3% of the coupons that had been issued by the Wm. Wrigley Jr. Company and were of standing at the end of the accounting period will be redeemed. I mean that figure is approximately correct. As to whether I pretend that it is an actual figure or that it is a reliable one, I will say it is impossible for it to be the actual figure. It is not conjecture. It is based upon the past experience. I would not call it conjecture.

Suppose a man had been in business from January 1,
3480 1900, to the present time and dies and he leaves a will;
(3206) in that will he leaves to me the profits which he made in his business during the year 1915. The only question involved is to ascertain what those profits are. The question involves no question of infringement but a

pure question of accountancy, of ascertaining the profits of that deceased person's business during the particular year, 1915. Suppose that those profits had been left to me; that I was the beneficiary; suppose on January 1, 1915, the market price of the goods on hand was $500,000; that those goods had been bought before January 1, 1915, and had cost a million dollars, and I was going to make the computation to see what profits I was going to have under that will for
3481 the year 1915. I would charge the merchandise to the account at the market because there would be losses, and
3482 I would charge the account with five hundred thousand dollars, the loss having presumably been charged to the previous year. I would charge the inventory with five hundred thousand dollars.

As to whether I said I was familiar with the treasury relations because I referred to treasury form blank No. 50, I will say I did not. Mr. Aldrich asked me a question about form 50. As to whether I testified to it, I will say counsel asked me whether I referred to it. I did not refer to it. Mr. Aldrich was the one who referred to it.

In my opinion, the Wm. Wrigley Jr. Company could
3483 now file a claim against the Government to recover the income and excess profits taxes which they deducted in their accounting filed with the Master. I can't tell how much.

3484 I have before me Touche Exhibit No. 10. I don't remember now any more respecting the time when I first saw that document, or a copy of it, than I did when I was (3207) examined by Mr. Mayer on that subject before.

3485 As to whether, before I expressed an opinion as an accountant on the subject of how to allocate an advertising expense I would want to see the advertisement, I will say not always. I would have to base my conclusion upon a certain state of facts, and certain principles. In the particular case that I am testifying in, this Wrigley accounting, I don't pretend that I examined the advertisements or copies of them.

As to whether I pretend to have expressed any opinion as to what the proper method of allocating expenses for advertising is except that I interpret the decree referring the case to the Master as requiring the allocation to be on the basis of Doublemint sales as compared to all sales, I will say there was another condition too besides that.

That was that under these circumstances it was impossible for Wrigley & Company to show how they had allocated. They did not leave records that would show how this expense could be allocated. All I know on that sub-
3486 ject is what Vincent and Hagberg told me.

To avoid any misunderstanding, I am not testifying, first, that from my information I can't tell how the Wrigley expenses for advertising during the accounting period should be allocated because of the absence of necessary material, and I also say that I didn't examine the books or records or writings of the Wm. Wrigley Jr. Company to find out whether they had or had not the necessary data to make that allocation of advertising. My representatives did. I do not mean to intimate by any answer I have given what the proper method was for allocating
3487 the Wrigley advertising expenses.

(3208) March 27, 1922. 10:30 o'clock, A. M.

3488 HERBERT C. FREEMAN, having been first duly sworn, testified as follows on behalf of the L. P. Larson Jr. Company:

Direct Examination by Mr. Aldrich.

The Witness: My name is Herbert C. Freeman. I live at Riverdale, New York. I am vice president and general manager of the National Cloak & Suit Company.
3489 I assumed my present duties in January, 1921. Prior to that time I had been a public accountant for about twenty-one years. I commenced my work as a public accountant in London, England. I was in England three years. The remaining eighteen years I have spent in New York. I was at one time connected with the firm of Touche, Niven & Company. The entire eighteen years of my American practice in accountancy was with the firm of Touche, Niven & Company. I am a member of the American Institute, and a certified public accountant of the State of New York. I have examined the report of Touche, Niven & Company as filed in the case of Larson against Wrigley.

(Mr. Aldrich stated that he would not object to the record showing that Mr. Whitworth, Mr. Steven and Mr.

Vincent were present during the examination of this witness.)

I have not disagreed with the conclusions of that report as filed in any way. I have had occasion to consider and make comparisons of the figures with refer-
3491 ence to advertising as furnished by Mr. Stanley in his testimony in this case with the volume of sales. I have
(3209) prepared a tabulation of such figures, and have it here. I have taken the figures testified to by Mr. Stanley as appearing on pages 833, 840, 843, 905 and 908 of the record.

I have taken the figures testified to my Mr. Stanley
3492 for sales and advertising for the years from 1910 to 1913, inclusive, and for the years from 1915 to 1918, inclusive. I have omitted the year 1914 from my tabulation but have shown it as a foot note because it is broken into two periods, and I thought it was fairer to disregard that because there might be some seasonal condition which would make the figures for one not comparable with the other. I have computed the percentage of advertising to sales for each of the years and have shown that in a column on the right hand side of the statement.

(Mr. Aldrich offered in evidence the said statement prepared by the witness Freeman. It was received in evidence, marked Larson Exhibit No. 138.)

(3210) Said Exhibit shows the following:

3493

		Sales	Advertising	% of Adv. to Sales
Years	1910	4,445,029.57	709,708.26	15 97
	1911	5,860,464.58	1,177,939.80	20 10
	1912	7,283,151.82	1,061,987.24	14 58
	1913	8,973,137.89	1,871,661.80	20 86
		26,561,783.86	4,821,297.10	18 1
Years	1915—	9,717,145.33	2,112,895.66	21 74
	1916—	12,482,342.87	2,496,601.01	20 -
	1917—	15,713,657.84	2,440,739.75	15 53
	1918—	17,161,934.86	2,430,315.98	14 16
		55,075,080.90	9,480,552.40	17 2
Note "Year	1914	8,008,536.07	2,252,458.23	28 12

(Omitted because of broken periods)"

Larson Exhibit 13

3494 The Witness: I might say that as to the figures from 1915 to 1918, inclusive, I am not able to connect those with the figures shown in the Touche, Niven report, but since my purpose is to make comparison of the period prior to this accounting with the period during the accounting, I felt that I could take Mr. Stanley's figures, assuming that they would be prepared on the same basis in the two periods.

In my inspection of the record the testimony indicates that Mr. Stanley in his statement of the figures of the total advertising for each year included in the advertising as a part thereof the U. P. S. Coupons, the discounts to the trade, the printing of U. P. S. Coupons, and perhaps some other items.

(3211) These figures and this tabulation is simply for the purpose of comparison and for the purpose of showing the percentage of the advertising cost to sales. I might add to that, it is also for the purpose of showing the

3495 comparison between the volume of sales in the four years prior to the accounting period and in the four years subsequent to the beginning of the accounting period.

I have had occasion also to make an examination and a tabulation of the advertising per the Wrigley account as corrected by Touche, Niven & Company and the sales of all brands, the statement of the sales of all brands, and the Touche, Niven & Company's adjustment of contingent liability on account of U. P. S. Coupons, and the U. P. S. Coupons as adjusted by Touche, Niven & Company as before less the adjustment. I have that sheet with me.

The information that I have sought to tabulate in this sheet was derived as to all the figures from the Touche-Niven report. As to the percentages, I computed them myself.

(Mr. Aldrich offered in evidence the said tabulation. It was received in evidence and marked Larson Exhibit 139.)

3496 (Larson Exhibit 139.)

3497 I may say that these figures have not been checked by Touche-Niven against their report and I should like that to be done in case I might have made some inadvertent misuse of any of their figures. As to the figures to which I refer as having not yet been checked, I will say none of

the figures on this statement have been checked by Touche-Niven against their report. I have taken them
(3212) myself from the report. I believe they are correct, but I would like to know that they had been checked.

I had three principal purposes in mind in preparing this statement. I first wanted to show that the percentage of advertising to sales have been steadily reduced from year to year. The percentage, using Touche-Niven's corrected figures for advertising, is 24.11 in the five months period of 1914, 16.01 in 1915, 11.40 in 1916, 8.65 in 1917, and an average of 7.67 in the period from January 1st to November 12, 1918. I also wanted to
3498 show, in view of the fact that Mr. Stanley's figure included the coupons as well as advertising, that the percentage of the cost of coupons to sales has not fluctuated sufficiently from year to year to affect the general trend in the percentage of advertising. I also wanted to show that the actual amount spent on advertising did not increase in 1917 as compared with 1916 and 1915.

I refer to 1917 particularly because that is the year in which, as I understand from the Touche-Niven report, the Juicy Fruit brand was introduced by Wrigley's. I also wanted to show that the uniformity in the percentage of the cost for U. P. S. Coupons from year to year is more regular after the adjustment made by Touche-Niven in the amount of the contingent liability than it was before. The figures shown in the Wrigley account show a greater fluctuation than the figures shown after applying the correction of Touche-Niven.

In the second and third columns, as I have now numbered them, and also between the fourth and fifth columns and perhaps other places in this report, I have the capital letters "A" and "B". As to what that is in-
3499 tended to indicate in this tabulation, I will say the fig-
(3213) ures marked "A" are according to the Wrigley account as quoted in the report of Touche-Niven. The figures marked "B" are the figures as corrected by Touche-Niven in their report. I might mention there that the principal difference between the advertising figures as shown by the Wrigley account and that shown by the Touche-Niven corrected report is the amount of donations which Touche-Niven have deducted from advertising.

I have considered the question of deferred or residual

value of advertising, but as an accountant I can't say that I have ever given effect to my consideration. I have given effect to what many people consider practically the same thing in terms of good will.

I am familiar with the rule obtaining in the Surrogates' and the Court of Appeals of New York with reference to the methods properly to be adopted in ascertaining the value of good will.

3500 (Mr. Aldrich asked the witness to state what that rule was. Mr. Mayer objected on the ground that was a decision on a question of law; that good will in the estate of a deceased had nothing to do with the question before the Master; that the law was established in this jurisdiction there is no such thing as value for good will to be included in an accounting for profits of an infringer; that
3501 the question called for secondary evidence; that it did not appear that Mr. Freeman was an attorney, and it did not appear that he ever put the rule into practical exe-
3503 cution. The Master asked the witness what knowledge he had about any rule of that kind. The witness answered: "I have read a great many of the cases that have been decided in these courts and I have also in
(3214) the course of my practice had occasion to put that rule into actual, practical use for the purpose of deter-
3504 mining the value of good will." The Master then asked him whether he had any opinion as to whether it was a sound rule or not. The witness stated he believed it to be a sound rule. The Master overruled the objection. The witness continued:)

The rule is to take the average of the profits of a business over a series of years, preferably five years, to deduct from that average interest upon the average tangible capital employed in the business during those years and to apply to the balance of profits remaining some multiple generally spoken of as the number of years purchase. The resulting figure is the value of the good will.

In ascertaining the number of years purchase you consider the character of the business, the permanence, and so forth, and its history as a dividend earning busi-
3505 ness, both in determining the percentage of interest to be allowed on the tangible capital employed and in determining the multiple to be applied to the profits in excess of that interest, the character of the business (the

number of years during which it has made profits), and the general stability of the business is taken into account.

If the statement of the business showed from year to year an ever increasing volume of sales it would tend to increase the number of years purchase which should be allowed for the excess of the earnings over and above the return allowed on the tangible assets. If it was also shown in the history of the business the percentage of outlay to produce this increasing volume of returns from year to year in the way of advertising, and so forth,
(3215) was a constantly decreasing percentage, it would tend to decrease the percentage to be allowed on the tangible capital used in the business and to increase the number of years purchase of the average profits.

3506 (Mr. Mayer stated he understood that all this evidence about good will was received over the objection of the Wrigley Company. The Master stated that it might be so understood, to which Mr. Aldrich agreed.)

There has been a tabulation made of the Wrigley business on the basis of returns from the beginning of the accounting period to the end thereof with tabulations as to different amounts of interest on the tangible assets as shown by their statement and also different years purchase. I have a copy of that tabulation here. I hand the sheet to Mr. Mayer. The earnings as reported in the sheet which Mr. Mayer is now examining are earnings as
3507 reported by the Wrigley Company. They are before making any corrections of the allowance made by the company for U. P. S. Coupons of the fifty per cent reserve for contingent liability.

In my last answer I have spoken as though the reserve set up was on the unredeemed coupons instead of the
3508 issues coupons. As to where I got that understanding I will state the reserve is arrived at by taking fifty per cent of the amount of coupons issued during the year and deducting from that figure the amount actually paid in the redemption of coupons during the year, the balance presumably representing the liability on coupons not yet redeemed.

In making this computation as shown by this table I have assumed that the Wrigley Company's good will at the beginning of the accounting period was six million dollars.

(3216) As to whether I saw the financial statements of the

3509 Wrigley Company as they appear in the record for the years 1914 to 1917, inclusive, I will say that I can't say that I made any detailed study of those statements. My examination has been principally confined to the Touche-
3510 Niven report. In the financial statements which are in evidence there is an item carried in the statement of $7,500,000. for good will and trade marks. I saw those statements. In 1917 the item of patents appeared in the item also of $7,500,000, trade marks and patents. During that year or at the beginning of 1918 they were separated; the patents were separated from the good will and put in at $1,500,000. In applying the rule to which I have testified as the proper rule of ascertaining the good will I have, for the purpose of the tabulation which is before me, assumed the good will of the Wrigley Company at the beginning of the accounting period as $6,000,000. In order to ascertain the actual value of the Wrigley Company's good will at the beginning of this accounting period I should also require a statement of the net tangible capital employed in the business during the preceding five years and the amount of the net profits for each of the five years.

(3217) Mr. Aldrich then stated that he asked the Wrigley
3511 Company on the record to produce the information required by the witness for the purpose of enabling the computation to be made, so that the same rule of ascertaining the value of the good will at the commencement of the accounting period could be applied at the end. Mr. Lane objected to that as incompetent, immaterial and irrelevant and as having no bearing on the issue.

(Mr. Aldrich stated that the annual statements of the Wrigley Company contained the information; that certain of them were in the record and that he was asking for nothing else but the same statements that had been made for other years).

3512 As to whether, unless I can get a statement of the net tangible capital and of the profits for each of the preceding five years, I would be unable to ascertain the value of the good will of the Wrigley Company at the commencement period, I will say I should be unable to
3513 ascertain that value in the same way or with the same degree of accuracy as I can ascertain it at the end of the accounting period. As to whether, if I do not procure that information I can't put a value on the good will at

the commencement of the accounting period that would be definite or reliable in your opinion, I will say—I can't put any that can be as definite or reliable as the one at the end of the period. Without such information I don't think it would be necessarily confined to the figure $6,000,000. as the value of the good will at the beginning of the accounting period. If I had no other information to guide me, I should be inclined to take the volume of sales for a full period of years prior to the accounting period and compare it with the volume of sales for the same number of complete years during the accounting period. The testimony of Mr. Stanley in the record
(3218) furnished me gives the volume of sales for some year
3514 prior to the accounting period and gives the advertising expense for each year for a number of years prior to the accounting period, but I would like to advise the Master, in order that I might speak with a greater degree of certainty on the matter, to have, in addition to what I now have, a record of the tangible assets employed in the business for each of these years and the profits realized in each of these years.

3514 (A discussion then arose between counsel and the Master as to how much information Mr. Aldrich required and as to how much should be produced.

3520 Mr. Mayer stated that he understood that Mr. Aldrich was modifying the request by saying that he would be satisfied if he were furnished with the annual balance sheets from the time the West Virginia company was organized. Mr. Aldrich stated that he wanted to refer that to Mr. Freeman).

The witness said: As I understand it, that would give us a record for three years and seven months. My thought then would be that to make the comparison a proper one we should use, not a period of five years profits during the accounting period, but a less period, say, of four years profits. So that the periods taken
3512 would be as nearly comparable as possible. But I think the period of three years and seven months is sufficiently long to permit of a calculation being made. I am aware of one case in a New York court where a period I think of less than one and one-half years was used for the purpose of determining good will.

(A discussion then arose and Mr. Aldrich stated that he would be satisfied with the balance sheet of the Wm.

Wrigley Jr. Company for the years 1911, 1912 and 1913 with a statement of the tangible assets and profits. The witness said he would also want the initial balance sheet at the beginning of 1911 which would show the assets and liabilities taken over by the Company when it was first formed. Mr. Aldrich then offered in evidence the sheet headed "Wrigley vs. Larson. Tentative calculation of value of good will created during the period of infringement." The sheet so offered was received in evi-
(3219) dence and marked "Larson Exhibit 140).
3522-3523 "Larson Exhibit 140".

3525 (March 27, 1922, 2 o'clock P. M. Mr. Aldrich asked the witness to explain in detail to the Master Larson Exhibit 140. It was understood between counsel and the Master that the explanation by the witness would be over the objection of the Wrigley Company, said objection being stated in detail at the morning session.)
3525 The witness continued: The exhibit shows the average invested capital during each of the years or periods covered by the accounting and the net profits for each of those periods as shown by the Wrigley accounts. I should say, if I may correct what I said before, it shows the average tangible capital during each of these periods. It also shows the amount of interest upon this average tangible capital for each period calculated at various rates, viz., seven, eight, nine and ten per cent. It also shows the excess of the profits during each of those periods over the amount of such interest. By "over the amount of such interest" I mean on the net tangible assets. It then applies to that exess profit a multiple of three years, five years, ten years and fourteen years pur-
3526 chase so that the statement shows the value of the good will at the termination of the period on the basis of allowing the various rates of interest from seven to ten per cent on the net tangible invested capital, and capitalizing the excess profits on the basis of three, five, ten and fourteen years purchase. From each of the value of good will so determined the value shown by the Wrigley accounts of $6,000,000. is deducted. This deduction is, of course, made in the absence of any more exact method of determining the value of the good will at the beginning of the accounting period. It was my desise, if I could get the information that was asked for this
(3220) afternoon, to make a computation on the same basis

covering the value of the good will at the beginning of the
3527 accounting period. There is one additional statement I should make. At the foot of the sheet the proportion of the addition to the good will corresponding to Doublemint's proportion of the sales is shown. That is, shown for each of the different bases upon which the good will is determined. I think I have seen here practically all of the exhibits in the form of advertising of the Wrigley Company during the accounting period, that have been made a part of the record in this case. There may be a
3528 few I have not seen. I have not gone into a detailed examination covering all characters of advertising.

(Discussion then arose and Mr. Aldrich stated that before he examined the witness more on this subject he wanted him to examine the seven books of advertising that Mr. Stanley had been interrogated upon. Mr. Mayer
3530 stated that there was no objection to the witness examining these books)

3531 (It was agreed that Mr. Freeman and Mr. Whitworth should accompany Mr. Stanley to the Wrigley Company and examine the books in question and resume with the witness next day.)

3533 March 28, 1922, 2 o'clock P. M.

I have examined in detail the volume of Exhibits and specimens of the Wrigley advertising. Mr. Aldrich then asked the witness what, in his opinion, was the character of that advertising and if any of it is institutional in character and in what proportion. Mr. Mayer objection on the ground that the advertising spoke for itself, that the witness' opinion as to what was institutional was incompetent, irrelevant and immaterial and that the court would have to decide it and that it needed no expert evi-
(3221) dence, and Mr. Mayer also objected on the ground that it did not appear that the witness had made a sufficient examination to be able to state what proportion is so-called institutional. The objection was overruled.

The advertising appears to me to be very largely of an institutional character. In every year except to some
3534 extent the year 1915 the emphasis is laid to a considerable extent on the institutional name of "Wrigley's" and even in case where the advertising takes the form simply of a picture of the package, in those cases the package is described as Wrigley's Spearmint or Wrigley's

Doublemint and the institutional character is still preserved.

In my opinion even in the year 1915 at least fifty per cent of the advertising of all kinds covered in the volumes which I saw is institutional, and in the year other than 1915 I would say that substantially more than 50% was institutional.

In speaking of it as being 50% or more institutional, I refer to the space and prominence given the words "Wrigley's etc." as compared with the rest of the space. The name "Wrigley's" is very prominent owing to the type used in many advertisements where it may not
3535 occupy 50% of the space.

I was furnished with four typewritten sheets which show the assets and liabilities of the Wrigley Company on January 1, 1911, on December 31, 1911, December 31, 1912 and December 31, 1913. The last three sheets also contain a memorandum of the profits for the years 1911, 1912 and 1913 respectively. These statements were handed to me as copies of summarized statements of the position of the company as shown by their books.

(3222) (Mr. Aldrich offered in evidence the sheets in ques-
3535 tion. Mr. Mayer objected on the ground that they were incompetent, irrelevant and immaterial. The objection was overruled. Said financial statements of the Wrigley dated January 1, 1911, December 31, 1911, December 31, 1912 and December 31, 1913, so offered in evidence by Mr. Aldrich, were received in evidence and marked "Larson Exhibits 141 to 144 inclusive.)

3537 Said January 1, 1911 statement contains an itemized list of "Assets" aggregating $9,752,750.78, including an item of "Trade-Marks, Concessions & Patents $7,500,-000.00", and a heading "Liabilities" under which the Capital Stock is shown to be $9,000,000.00, and the Accounts Payable, $752,750.78.

3538 Said December 31, 1911 statement contains an itemized list of "Assets" aggregating $10,246,876.36, including an item of "Concessions, Trade-Marks, Pts., Etc. $7,500,-000.00", and the Liabilities are shown to be "Bills and Accounts Payable" $49,301.89, and $1,500,000.00 Preferred Stock, and $7,500,000.00 Common Stock, and a Surplus of $1,490,074.47, less 1911 Dividends of $292,-500.00, a balance of $1,197,574.47.

3539 Said December 31, 1912 statement contains an itemized

list of "Assets" aggregating $11,741,728.96, including an item of "Trade-Marks, Good Will, Etc. $7,500,000.00", and shows the Liabilities to be $1,500,000.00 Preferred Stock and $7,500,000.00 Common Stock, and a Surplus of $2,741,728.96, and shows profits of $2,084,154.49.

3540 Said December 31, 1913 statement contains an itemized list of "Assets" aggregating $12,938,586.58, including an item of good will and trade marks, $7,500,000., and shows the Liabilities to have been $9,000,000.00 for Capital Stock, and $68,643.85 for Accounts Payable, and a Surplus of $3,869,942.73, and Profits of $2,343,213.77.

(3223) The purpose of procuring these sheets was to get the tangible assets of the Wrigley Company for the years named and the profits made in each of those years with a view to enabling me to make a computation of the value of the good will at the beginning of the accounting period under the same rule that I wish to apply to the ascertainment of the value of the good will at the end of the accounting period.

(Mr. Aldrich then asked the witness whether or not, based upon the information thus furnished he had pre-

3541 pared a tabulation under the rule which the witness had stated was in use in the Surrogates Court of New York as to the value of the good will at the beginning of the accounting period and showing also the increase in the value of the intangibles of the Wrigley Company during the accounting period. Mr. Mayer objected. The objection was overruled.)

3542 From these statements and from the report of Touche, Niven & Company I have prepared a statement which I have described as "Memorandum on valuation of good will."

Mr. Aldrich offered the sheet just referred to in evidence. Mr. Mayer objected for the reasons we objected to the introduction of Larson Exhibit 140. The objection was overruled. Said sheet was received in evidence and marked "Larson Exhibit 145."

3543 Larson Exhibit 145.

(3224) In explanation of this Exhibit 145, I will say:

3544 I have prepared a memorandum in which I have shown for the years 1911, 1912, 1913 and for the seven months ending July 31, 1914, the sales for each of those periods. These sales I obtained from the testimony of Mr. Stanley to which I referred earlier in my testimony. I have

also shown the net profits as reported in the Exhibits Nos. 141 to 144 inclusive. I found from an examination of Exhibits Nos. 141 to 144 that no provision had been made during the period covered by those statement for amortization of patents corresponding to the provision made during the accounting period. As a matter of fact, in 1918 an adjustment was made in the accounts of the Wrigley Company, and as I understand it, reflected on their books, providing for amortization of these patents back to and including the year 1911. I have accordingly deducted from the profits for the years 1911, 1912 and 1913 and the first seven months of 1914 the amounts of amortization corresponding to those years reflected on the books of the Wrigley Company in 1918. After deducting this figure I arrived at what I have called in my memorandum the adjusted profits for that period. I have made an addition of these figures for the entire period and have shown in a separate column the average per annum. I have further taken from the Exhibits Nos. 141 to 144 the net tangible capital at the beginning and at the end of each of these years or periods and have shown the average for each year or period. I have also shown the average per annum of such net tangible capital. I have then computed interest on the average net tangible capital at two rates of per cent, viz., six per cent per annum and seven per cent per annum. In adopting these
3545 rates I have taken into consideration the very great
(3225) stability of the business as shown by the figures which
3545 I have now had an opportunity of seeing for the entire period from 1911 to 1918 inclusive, which appear to me to justify the charging of a lower rate of interest on net tangible capital than would be the case in a business of a more fluctuating and speculative character. I have then
3546 shown the excess of the annual profits and of the average annual profits over the amount of interest on the average net tangible capital employed in each of the years and for the entire period, and I have capitalized or determined the value of the good will based on these excess average profits on the basis of ten years purchase of the excess profits, that being in my opinion a proper multiple to use in the determination of the good will of a business of this stability and character.

On the basis of allowing six per cent interest per annum on the average net tangible capital employed the

value of the good will of the Wrigley Company at the beginning of the accounting period amounts to $16,261,340, or at the rate of seven per cent per annum on the average net tangible capital to $15,919,330. I have for purposes of convenience shown on this same memorandum the profits of the Wrigley Company as shown in the Touche-Niven report for the years 1915, 1916, 1917 and the period from January 1st to November 12th, 1918. I have used those periods because they correspond as near as possible at the end of the period to the fiscal periods covered by the figures furnished to me prior to the accounting period.

I should make one further explanation with regard to the figures prior to the accounting period, viz., that the
(3226) profits for that period and the tangible capital at the
3547 end of the period were obtained by me from the working papers of Touche, Niven & Company and were not shown in the Exhibits Nos. 141 to 144. To the profits shown for the period from 1915 to November 12, 1918, inclusive, I have added back the excess amount of reserve provided for the contingent liability on U. P. S. Coupons deducted by the company in stating their account. The company provided a reserve of 60% of the total coupons issued from which they deducted the actual amount expended for coupons redeemed, treating the balance as their contingent liability in respect of coupons unredeemed. In my opinion the accounts and the experience of the company show that this allowance is excessive, and that it should be reduced to 33-1/3% or less, but for present purposes I have adopted the provision of 33-1/3% stated in the report of Touche, Niven & Company. I have then shown the adjusted profits for the four accounting periods and the average per annum from which I have deducted as before interest at the rates of 6% per annum and 7% per annum upon the net tangible capital employed during those periods, as shown in Exhibit No. 140, and I have shown the excess of the annual profits and of the average annual profits during each of those periods over the amount of interest so allowed. I have then deducted the
3548 value of the good will at the end of the accounting period on the same basis as before, viz., at the rate of ten years purchase of the average annual profits. Upon this basis the value of the good will of the Wrigley Company, allowing six per cent interest on net tangible capital at the

close of the accounting period, was $22,093,100. and allowing seven per cent interest on tangible invested capital, was $21,309,380.

(3227) On the basis of six per cent interest on the net
3549 tangible capital, the increase in the value of the good will at the end of the accounting period over the value at the beginning of the accounting period is $5,831,760; and on the basis of allowing seven per cent interest on the net tangible capital, the increase is $5,390,050.

I want to add one further statement with regard to the profits shown during the accounting period. These profits are stated after allowing for federal income and excess profits taxes. The amount of these taxes in 1915 was $20,488.23. I am testifying from the report of Touche, Niven & Company. For the year 1916 they were $51,563.78. For the year 1917 they were $1,362,643.26. For the eight months ended August 31, 1918, they were $1,359,508.42. For the period from September 1st to October 4, 1918, they were $191,866.11, and for the period from October 5th to November 12, 1918, $215,986.41. The effect of the deduction of these taxes has, of course, been to reduce the profits of the Wrigley Company during the accounting period to a very substantial extent, and, accordingly, to reduce the value of the good will based upon those profits at the end of the accounting period.

3550 The conclusions I have reached based upon my examination of the forms of advertising and upon the figures which I have just stated are that the advertising during the accounting period was, to a very large extent, of an institutional character and of a nature to increase the value of the good will of the Wrigley Company.

I mean that it had a deferred value which could be measured by the increase in the value of the good will and, in my opinion, the amount of the increase in the value of the good will should be deducted from the

(3228) amounts expended for advertising of all kinds before
3550 making an apportionment of the cost of advertising as between Doublemint and the other brands sold by the Wrigley Company. I have not made that computation in detail. I have, however taken the amount of the expenditures for advertising, including the amounts ex-

3551 pended for U. P. S. coupons and the amount of the contingent liability in respect to U. P. S. coupons as adjusted by Touche, Niven & Company to the basis of

33-1/3%. I have not prepared a statement from which I am now reading. I am speaking now from some pencil figures which I made on one of my earlier schedules. I think that the amount spent for advertising during the whole accounting period, as shown by the Wrigley account, is $6,616,605.55, and that the adjusted amount of the expense for U. P. S. coupons, including contingent liability and printing, but before correcting any errors
3552 found by Touche, Niven & Company, was $2,472,214.96, making a total before correction of errors by Touche, Niven & Company, but after adjusting the reserve for contingent liability of $9,088,820.51. The corresponding figures, after applying the corrections of errors made by Touche, Niven & Company, are $6,363,082.11 for advertising and $2,490,200.99 for U. P. S. coupons, including contingent liability and printing, making a total of $8,853,283.10. From this I have deducted the amount of the increase in the value of the good will at the end of the accounting period as compared with that at the beginning of the accounting period on the basis of deducting seven per cent on the net tangible capital; this increase amounting, as I have already stated, to $5,390,050, which
(3229) I have treated as the measure of the deferred adver-
3552 tising. This leaves a balance representing the total cost of advertising for the accounting period to be apportioned as between Doublemint and the other brands, of $3,463,233.10 upon the basis of Touche, Niven & Company's corrected figures. I have not apportioned that to Doublemint because I could only do so approximately in total. To give effect to this adjustment correctly, it would be necessary to make this computation for each of the years covered by the accounting. I did not use the same percentage for each year. The percentage of Doublemint sales to all sales is not the same in each year. I used the same per cent on Exhibit 140, namely 15.71%, but that was simply for the purpose of stating an approximate percentage. That is the average percentage for the total accounting period.

3553 Based upon the average per cent of 15.71% of Doublemint sales to total sales during the accounting period, the charge for advertising against Doublemint for the entire period would amount to $544,073.92.

Cross-Examination by Mr. Mayer.

3554 The first line on Exhibit 140 purports to be "Average Invested Capital during the Period." I arrived at this figure from the balance sheets of the Wrigley Company, excluding the intangible capital. To specify all the items that I included as invested capital in order to arrive at the average showing on line 1 of Exhibit 140, I would have to have my working papers here. Everything on
3555 Exhibit 140 depends upon the line reading "average invested capital during the period in a greater or less degree."

(The hearing was adjourned until the next day so that the witness could have present his working papers.)

(3230) March 29, 1922, 10:30 A. M.

3557 I have here all of the working sheets and documents which I used and which I prepared in preparing the various evidence to be introduced while I was on the witness stand. Mr. Mayer asked the witness to produce all the working sheets that he referred to or used or in any way relied on in preparing the statements which he had produced here. Mr. Aldrich objected, stating the witness would produce specific ones as they were required. The
3558 objection was overruled. I have now produced before the stenographer all the working sheets and documents
3560 to which I referred and on which I relied and which I prepared in the preparation of the tabulations and documents I prepared and which have been introduced in evidence since I was on the stand, with the exception that I also relied upon the Touche, Niven report which has been filed in this case as Larson Exhibit 132. I have also carefully examined the testimony given before the Master and that there is still to be brought here a pencil original and an ink original sheet which I inadvertently forgot to bring here which two sheets I had prepared. I did not mean to say I had carefully examined the testimony. I don't pretend to have done all that. I have been through three or four volumes of the testimony, two in considerable detail, and the other two for the purpose of extracting such figures as I went along of which I have made pencil notes in the papers I have now submitted.

(3231) It is my understanding that I have examined all the
3561 testimony in the case on hearing before the master insofar as it had any bearing on the accounting issues. Of course, it is also understood that as to these statements that I have submitted, I have not personally set down all the figures with my own hand. I have gone over them and seen that they were correct. I have not personally written down all of the figures or data. In preparing those particular documents I had the assistance of Mr. Vincent, Mr. Hagberg and to some extent Mr. Whitworth. I have had conferences with Mr. Aldrich, but I have not had any assistance from him in preparing any of my statements.

I am looking at the first line of Exhibit No. 140 reading: "Average invested capital during the period," and then, come some figures on the same line. I can give the
3562 details showing how I arrived at those figures and what I included in invested capital. I have a statement which I now produce showing the connection between the capital stock and surplus as shown by the Wrigley Company's balance sheets as far as they are available or were available to me, and the figure of average invested capital shown in Exhibit No. 140, that is a new schedule which I now submit. I prepared that yesterday. It consists of ten sheets.

(Said schedule was marked Larson Exhibit 146, sheets 1 and 2.)

I also made use of these working sheets of Touche-Niven. By "these working sheets of Touche-Niven" I
3563 refer to four additional sheets of paper. Three are large yellow sheets and one is a small white sheet.

(3232) (Four working sheets of Touche Niven & Company just referred to were marked for identification Larson Exhibit 147, Sheets 1, 2, 3 and 4.)

I prepared Larson Exhibit 146 yesterday evening after adjournment. As to whether Larson Exhibit 146 was not in existence and not in any way relied upon when I prepared Larson Exhibit 140, I will say the sheets I relied upon are the three yellow sheets and the one small white sheet (referring to Larson Exhibit 147); the schedules which I have just handed to you which I prepared last night were handed to you in answer to your question as to whether I can now say what figures were included in that first line and I have prepared it for the purpose of

3564 enabling the figures included there to be clearly seen. I mean that it would have been much more difficult and I should have had to read into the record a lot of figures which I have now summarized in Exhibit 146. I mean to say that there is something in Larson Exhibit 146 which shows what the invested capital was of the Wm. Wrigley Jr. Company during any particular period. I say that with this explanation, that it does not show the individual items of assets and the liabilities deducted from those assets, but it shows the connection between the figures used and the capital and the surplus of the Wrigley Company. The capital and surplus, of course, simply represent the balance of the assets and the liabilities, and I have not shown the assets and liabilities in detail, but I have shown the connection with the capital and surplus of the Wrigley Company. There are no details of assets
(3233) and liabilities on Exhibit 146.

3565 In arriving at the first line of Exhibit 140 I have included as assets all of the first group amounting to $3,986,675.92 and all of the second group amounting to $1,719,579.73, making a total of $5,706,249.65. I have deducted the items shown on the liability side of the statement described as accounts payable, $32,466.75, and depreciation reserved, $111,738.42, making a total of $144,-
205.17. I have also included on the asset side $1,500,-

3566 000.00 of the item described as good will and trade marks. Thus having a total on the asset side of $7,206,-249.65 and a total of deductions on the liability side of $144,205.17, deducting the item on the liability side from the item on the asset side I arrived at a net balance of $7,062,044.48. I want to correct one figure by $6.00. There was an indistinct figure. The total of assets should be $7,206,255.65, and deducting the figure of liability as $144,205.17 I arrive at a net figure of $7,062,050.48 which is the figure shown on the third line from the bottom on page one of Larson Exhibit No. 146. From that figure I have made the deductions shown in detail in the column headed "December 1, 1914," on pages 1 and 2 of Larson Exhibit No. 146. I am explaining the first line on Exhibit 140. I have deducted from the figures taken from the balance sheet of the Wrigley Company, the depreciation of patent rights applicable to the period ending December 31, 1914, which was reported on the books of the Wrigley Company in 1918. I have also deducted the

contingent liability on unredeemed U. P. S. coupons applicable to the period ended December 31, 1914, as set up on the books of the Wrigley Company in 1918.

(3234) The working sheet that I used when I put on Exhibit 140 in that first line the amount of $7,030,590.14 under the heading "Five months ended December 31, 1914," was
3568 the first sheet of Larson Exhibit 147. I am still explaining the manner in which I arrived at the figure of $7,030,-590.14 shown on Larson Exhibit 140. I have also deducted from the figures which I have given before the amount of reserve for federal taxes for the period to December 31, 1914, which were paid in the year 1915 and have been thrown back as a liability at December 31, 1914, for the purpose of this statement. I have also deducted $5,255.52 representing the liability for coupons redeemed subsequent to December 31, 1914, but applicable in the period
3569 to that date. The Exhibit I had before me in making the answers that I have been making was Exhibit 146.
3571 As to what working sheet I had and used and relied on in preparing the first line of Exhibit 140 reading "average invested capital during the period," and then showing the different periods in the accounting period, I will
3572 say I relied on this statement 140 of Larson Exhibit 147. Larson Exhibit 140 was prepared for me in accordance with the ideas which I wished to be embodied in that statement and it is based entirely upon Larson Exhibit 147. I relied upon the statement on the first sheet of Larson Exhibit 147 which showed the amount of the capital stock of the Wrigley Company at July 28, 1914, December 31, 1914, December 31, 1915, December 31, 1916, December 31, 1917, November 12, 1918, and December 31, 1918. It also shows the total of the capital stock and the surplus of the Wrigley Company arrived at by
(3235) taking the surplus at the end of December 1918, and adjusting it back to each of the intermediate periods which I have stated before by means of applying the adjusted profits of the Wrigley Company for each of these periods as shown by Touche Niven & Company's report. From this combined figure there is deducted the value of
3573 the good will which is stated at $6,000,000.00, that being the figure which was set up separately in the books of the Wrigley Company as the value of good will. This leaves a net figure which is described as invested capital at end of period. The figures for July 28, 1914, and December

31, 1914, are then averaged and similarly the figures for December, 1914, and December, 1915, are averaged, and so on, and a figure is arrived at which is described as average invested capital during the period then ended, which is the figure shown on the first line of Exhibit 140.

The reason this method was adopted in arriving at the net invested capital for each of the periods was that balance sheets of the Wrigley Company were not available at each of the periods, and it was therefore not possible to state the figures in the form of a list of the assets and liabilities of the Wrigley Company at each of these dates. The same result is, however, obtained, as I have said before, by taking the capital stock and the surplus and deducting from the combined figure so arrived at the amount of any intangible assets which it is necessary to exclude for the purpose of determining net tangible assets.

The apparent confusion which has arisen in the course of my answering the question is due to the fact that I
3574 have been asked not only to explain how I arrived at the first line on Larson Exhibit No. 140, but also to state what
(3236) assets of the Wrigley Company were included in that item, and the latter part of the question I cannot answer as to each of the periods, and I can only answer as to those periods for which we have the balance sheets of the Wrigley Company by furnishing detailed figures from the testimony already on record.

I believe Larson Exhibit 147 for identification, sheet 1, is either in the handwriting of Mr. Hagberg or of an assistant working under Mr. Hagberg's instructions. Speaking generally, that sheet is in ink, and it has some pencil corrections and memoranda. Those pencil figures were written by Mr. Hagberg and his assistant. That sheet was prepared some short time before I came to Chicago, and for my use in connection with this testimony.
3575 I arrived in Chicago Sunday morning. I came here purposely to be a witness in this case. I had some theories that had occurred to me since the Touche Niven & Company report was made which I communicated to the Chicago office of Touche Niven & Company and pursuant to that they prepared this sheet 1 of Larson Exhibit 147 for identification. I discussed them with Mr. Whitworth in New York recently, I would say within the last sixty days.

3576 In preparing that first line on Exhibit 140 I used the balance between the assets and the liabilities as reflected by the capital stock and the surplus of the Wrigley Company. In preparing that first line I didn't know what the items of assets were or what the items of liabilities were, only to the extent that I have seen them in the balance sheets in the testimony. The periods as to which I have seen balance sheets are indicated in the headings of Larson Exhibit 146, but as to that I should say that the reference to folio 192 under the heading of
(3237) "December 31, 1913," does not mean I had a balance sheet of December 31, 1913, but that the balance sheet of December 31, 1914, enabled me to determine the capital and surplus, or I should say the surplus of the Wrigley Company at December 31, 1913. As originally prepared, that first sheet of 147 contained the following: "Average excess profits capitalized at 7% per annum, $21,385,747.17." That's been changed in lead pencil so that ten per cent. has been substituted for seven per cent. and $14,970,023 has been substituted for $21,385,747.14, so that as corrected that first sheet now reads as follows: "Av-
3577 erage excess profits capitalized at ten per cent per annum, $14,970,023", and the sheet has also been changed in pencil, so that, instead of showing that the additional good will created during the accounting period was $15,385,747.14, it has been reduced to $8,970,023. I am not aware who directed that change to be made. This sheet was prepared in advance for the purpose of developing the figures necessary for the preparation of Larson Exhibit 140, and I have not in any event made use of the method of capitalizing the excess profits at any rate per annum. I prefer the method of using so many years' purchase. The effect, however, of this change is merely to change the result from approximately a 14.2 years purchase to a 10 years purchase, and the 10 years purchase figure is the same as that shown on Larson Exhibit 140 in the third column under the head of "10 years." It makes no change whatever in the basis of the figures.

3578 By tangible capital I mean property and plant, equipment, merchandise, accounts receivable, cash, deferred charges such as unexpired insurance. That is practically all. Tangible capital means net tangible capital. If you
(3238) are talking of tangible assets, then I will give you the tangible assets.

3579 As to whether I would include reserves in tangible assets, I will say I would deduct any reserves which reduced the value of tangible assets. The figures in line 1 of Exhibit 140 are after deducting reserves from the assets, from the tangible assets. All the reserves were deducted that were not included in surplus. They don't appear on sheet 1 of Exhibit 147. I can't tell from sheet 1 of Exhibit 147 alone what, if any, reserves were deducted in ascertaining the net invested capital. I have already explained that sheet 1 of Exhibit 147 was not prepared from the balance sheet of the Wrigley Company, but had necessarily to be prepared from the capital and surplus, the result being that the figures there used are the net difference between the assets and the liabilities and the reserves. For the purpose of this period I
3580 have regarded patents as constituting tangible capital. As to whether I call a reserve set up for taxes tangible capital, I will say I would deduct it in arriving at the amount of the net tangible capital. As to whether I regard such a reserve as tangible capital, I will say it is a liability, and as such has to be deducted in arriving at the net tangible capital. That reserve represents actual assets only to the extent that every liability is represented by assets on the other side in some form or other.

In making up the first line of Exhibit 140 the figures which I have used are after deduction of reserves for taxes. The different reserves which figure in the tangible
3581 capital, as I have used it, are reserve for taxes, reserve for U. P. S. coupons, reserve for depreciation, reserve for amortization of taxes. I believe those are all. By "re-
(3239) serve for depreciation" I refer to the depreciation taken by the Company and set up on its books. In arriving at the figures on line 1 of Exhibit 140 I made an allowance for reserve for depreciation of patents. The way in which my figures were arrived at necessarily deducted from the patents the amount of the reserve set up by the Company in 1918 which we have spread back over the years to which it applied. Where a reserve is set aside for a certain purpose, it does not mean that there is an equivalent amount of capital set aside. A reserve does not represent capital, it represents a diminution of capital.

As to whether I took into consideration at all in preparing line 1 of Exhibit 140 all the liabilities of the Wm.

3582 Wrigley Jr. Company, I will say all that were brought into account from year to year in preparing the statements contained in Touche, Niven & Company's report. I made no allowances either in any of the figures shown on Larson Exhibit 140 or in any of the conclusions I have testified to on account of this litigation that Larson has against the Wrigley Company. I made no allowances at all in any of my conclusions based upon the supposition that the Wrigley Company might be held to pay Larson something for infringement. If, in fact the Wrigley Company is liable to pay Larson something on account of infringement, that would not be a factor in determining the profits because the Wrigley Company retained the brand "Doublemint." If it were used as a liability in stating the capital, it would decrease the amount of which we should have to allow interest and would increase the amount of the good will. I am not prepared to say that the inhibition against the Wrigley Company, the injunc-
(3240) tion against the Wrigley Company deprived the Wrig-
3583 ley Company of anything of value. I am of the opinion that the profits during this period can properly be used for the determination of the value of the good will of the Wrigley Company regardless entirely of any claim which may be held valid against the Wrigley Company. I am of the opinion that the Wrigley Company when directed to pay its profits in Doublemint during the accounting period ought to pay a certain number of dollars to the Larson Company. I have made some calculations forming the basis as to how many dollars that amounts to. I have
3584 not prepared any complete accounting in this matter. I am only testifying as to certain aspects of the matter.

Larson Exhibit 132 shows the following:

"According to the accounting prepared by the Wrigley Company and filed with the master, the loss on sales of Doublemint during the period in question, exclusive of sales in Canada and Australia, after the formation of companies in those countries, was $272,627.53. According to our computations, arrived at as explained hereinafter, and exclusive of interest accruing to L. P. Larson Jr. Company on profits retained by the Wrigley Company, and exclusive also of the good will or residual value of advertising, and so forth, the profits on sale of Doublemint during the period were $2,840,528.74."

3585 I testified yesterday that in my opinion there ought to

be a deduction of $5,390,050 which I claimed as an increase in the value of good will of the Wrigley Company during the accounting period. I also testified that I regarded $5,390,050 as the value of what I called the deferred advertising of the Wrigley Company. As to whether I know that if I take $5,390,050 from the deferred value of the advertising that it will increase the profits on the sale of Doublemint during the period by at least several millions of dollars in excess of $2,584,528.74, I
(3241) will say I should have to look at my figures to be able to answer. The figure to which I have reference was stated as an approximate figure. It would increase the
3586 profits from the sale of Doublemint by $2,202,438.90 over the profits shown on the Wrigley Company's statement and without reference to any of the other adjustments made by Touche Niven & Company. It is not my opinion that the amount of profits on Doublemint during the infringing period would be at least the total of $2,840,528.74 and $2,202,438.90, or $5,042,967.64. In arriving at the figure of $2,840,528.74 appearing on page 1 of Touche-Niven report, Touche-Niven have already made an adjustment, as shown on page 2 of that report, of $1,777,468.17, and I want an adjustment made amounting to $2,202,438.90, so that I want to increase the amount of profits earned by Doublemint by $424,970.63, or a total of $3,265,499.47. Those figures are approximate. My view is not that the master ought to deduct from the amount which was spent for advertising during the accounting period $1,777,468.17 as shown on page 2 of the filed report, and in addition to that $424,970.73, or a total of $2,202,438.90 on account of advertising. My view is
3587 that the Wrigley accounting charges for advertising were $2,202,438.90, were too much. It is my opinion that the Wrigley Company should pay to the Larson Company $3,265,499.47 out of their profits. I don't think it diminishes the profits which they made on their sales during that period.

3588 If I were going to determine the good will of a business, one of the things I would want to know is how much profit it had been making. In my opinion the good will of a business is worth more if the profits are large than the good will would be worth of the same business if the
(3242) profits were small. Indetermining the good will of the Wrigley business, I have assumed that the Wrigley Com-

pany's profits were such as they would be if they paid no part of them to the Larson Company. I have made a valuation of the good will of the business which the Wrigley Company carried forward at the end of the accounting period based upon the profits from the sale of the several brands during the accounting period. Those profits are the measure of the good will of a business which is engaged in selling these brands of gum. I think that if a concern makes a million dollars a year profits for, say, three years in the business, that the good will is exactly the same regardless of whether or not it is subsequently ascertained that some of the million dollars a year profits that it made did not belong to it but belonged
3589 to a stranger. That is, if the business making those profits retains at the end of the period the same business as that in which it was engaged during the period. If there is no change at all in the business of a concern, which has been in business for three years and made a million dollars a year net profit, as to whether my idea is that the value of the good will of that business which continues is exactly the same whether the business keeps the million dollars a year profits or whether it is afterwards discovered that some of those profits were illegitimate, not a legitimate part of the business, but belonged to a stranger, I will say I cannot answer that yes or no. If the business from which the profits which you have described as illegitimate is retained by the concern you have in mind after the accounting period, I hold that the fact that they have to pay any part of the profits to a third person does not in any way diminish the good will.
(3243) In determining the proper multiplicand in my for-
3590 mula for ascertaining the value of good will, I have to know what the profits of the concern are. In the circumstances I have stated I do not think it is going to make any difference at all what multiplicand should be used, whether the concern has made a million dollars a year for years and retains it, or whether it is subsequently discovered that two hundred thousand dollars for those three years must be turned over to somebody else so that the actual net profits made by the concern have been only eight hundred thousand dollars a year. In either case I would not change the multiplicand.

If a concern made article A and article B, and I was asked to ascertain the value of the good will and to take

a three years basis, and the profits had been five hundred thousand for article A a year, and a like amount of profits from article B, making an aggregate of a million dollars a year profits, and I was asked to give my opinion as to the value of the good will, I would fix on a certain number of dollars; and then if I were asked whether I would change the value of the good will if, instead of the case supposed I was told to assume that that manufacturer must pay out all of the profits earned on article B, I would say if the manufacturer retains the right to continue the manufacture of article B, I should say that it made no difference whatever in the value of the good will. As to whether it would make a difference in determining what the net profits were that a manufacturer made during the three years if in the one case they were a million dollars a year and in the other case he only made half a million dollars, I will say the condition is no
(3244) different from that of a company, so far as the valuation of good will is concerned, from that of a company in which one-half of the profits are paid over to stockholders as long as the company retains the business.

I have been asserting that in my opinion, in order to know the value of the good will of a business you must know what its net profits have been for some preceding period. I have also stated the value of the good will will be more if the net profits are large than that value would
3592 be if the net profits are small. In the case supposed it does not make any difference in determining what the value of the good will of the business is whether part of the profits have to be turned over to a stranger. It makes no difference what disposition is made of the profits as long as the business continues in the hands of the manufacturers. The profits during the accounting period are merely a basis for the determination of the value of good will regardless of what is done with those profits at any time, and that is regardless of whether the profits ever belonged to the manufacturer or not.

3593 Wednesday, March 29, 1922. 2:00 o'clock P. M.

HERBERT C. FREEMAN resumed the stand for further cross-examination by Mr. Mayer:

In giving my conclusions as to the effect of the injunction against the Wrigley Company I didn't assume that the Wrigley Company had to alter its method of
(3245) doing business after the injunction. I think it is immaterial that the Wrigley Company had to make a change after the injunction as long as they retained the Doublemint brand. I did not assume in the conclusions that I have given that the Wrigley Company continued in the conduct of its business after the injunction the same as
3594 before. I did not assume that the injunction affected the Wrigley Company's business.

Line 2 of Larson Exhibit 140 purports to show "net profits for the period" and then certain figures. I arrived at those net figures from the Touche-Niven report Schedules A 1 to A 7. I have on the second line in column C on Exhibit 140 the figure $1,408,187.46, and I illustrate how I got that figure. On Exhibit A-2 of the Touche-Niven report in the column "All brands per books" there appears at the foot the figure of $1,408,-187.46 which is described as net profit or less, the loss in red. This particular figure is a profit.

3595 I testified I took the earnings as reported by Wrigley. I meant by that the figures as shown by the Wrigley books. I do not think I have ever seen any figures reported by Wrigley. In line 1 of Larson Exhibit 140 I had not used the figures reported by the Wrigley Company, and in line 2 I used the figures made up by Touche-Niven & Company. Both figures are as determined by Touche Niven & Company. Line 1 is prepared from the first page of Exhibit 147, and the figures included in that statement for the profit for these particular periods are the same in each case. In making up line 2 I made deductions for advertising and for United Profit Sharing Coupons. The deductions for advertising represent the total amount for advertising by the Wrigley Company.

3596 I mean as reported by Wrigley & Company and not as Touche Niven & Company suggests modifications. I take
(3246) the Wrigley figures without any modifications. In making up line 2 the deduction for contingent liability

for U. P. S. coupons is based on the 60 per cent reserve entered by the company on their books. The Wrigley Company in preparing their account used as a reserve 60 per cent of the unredeemed coupons. I have not examined the accounts filed by the Wrigley Company with the master only to the extent that they are quoted in the report of Touche-Niven. I have not assumed in making up these various exhibits, such as Larson Exhibits 140
3597 and 145 and 146 and 139 that the Wrigley Company in the account which they filed with the master took as a reserve for contingent liability on account of the U. P. S. coupons 60 per cent of the amount that was unredeemed. I explained that in my previous testimony. The 60 per cent reserve only applies to the total figures shown in Touche-Niven's report for all brands per books. My understanding is that the Wrigley Company's accounting in this matter was based upon a 50 per cent reserve of the unredeemed coupons. My opinion is that 33 1/3% would be ample as a reserve for a contingent liability.

3599 In preparing the figures on line 2 of Exhibit 140 I used the figures set up by the Wrigley Company on their books which were based on a 60 per cent reserve for unredeemed coupons. It is not my understanding that 60 per
3600 cent set up on the books of the Wrigley Company as a reserve for the U. P. S. contingent liability was 60 per cent of the unredeemed coupons. It is a 60 per cent basis. This reserve is determined on the Wrigley books by taking each year 60 per cent of the coupons issued during that year and deducting from that figure the amount paid out for the redemption of coupons during the year.

(3247) Line 3 of Exhibit 140 is seven per cent of the figures in line 1, except as to the broken periods in which for the five months it would be 5/12ths of seven months, and in
3601 the last period it would be a fraction of a year. The period used was ten months and twelve days. As to on what basis I made a division in order to get the profits for the twelve days, I will say the working papers don't show the exact basis. The working papers on which lines 3, 4, 5 and 6 are based were probably scratch paper, which was not preserved. I haven't them here. That is my only explanation. As I stated earlier, these figures were prepared for me and under my direction, but I was not actually here when they were prepared, and I would

not presume to tell the assistant how to figure interest for so many months and days.

I wish to vouch for the substantial accuracy on Larson Exhibit 140. I have not checked every figure. I have
3602 checked some figures. I have checked all the figures as to average invested capital. I have checked the figures as to net profits. I have scrutinized the figures as to interest and as to profits in excess of interest. As to why I checked the figures on average invested capital and on net profits, that is, the figures in lines 1 and 2 of Exhibit 140, I will say I checked the figures as to net profits because I considered that was rather an important feature of the schedule, and I checked the average invested capital for the same reason, and while I checked it only approximately the first instance, I went into considerable detail to prove it as against such statements as we had of the company's figures, and I know that with certain minor exceptions it is in agreement and I have given all those figures in Exhibit 146. Sheets 2 and 3 of Exhibit 147 are a draft from which Larson Exhibit 140 was typed.
(3248) In other words, Larson Exhibit 140 is supposed to be exactly like sheets 2 and 3 of Exhibit 147. Sheets 2 and
3603 3 of Exhibit 147 are part of the working sheets. As to where the balance of the working sheets from which sheets 2 and 3 of Exhibit 147 were made, I will say they were all made from those working sheets. The other two sheets of Exhibit 147 and such figures as to profit which were required to be taken from other sources were taken from the Touche-Niven report. The rest of the figures on the sheet are purely a matter of arithmetic and to the extent that there were any other working sheets they would simply be in the nature of a scrap paper. I have already explained to you that the Touche-Niven Exhibits 642 to 651, inclusive, which were already in evidence, were before me when I went over that statement and the final figure on this working sheet which forms the first sheet of Larson Exhibit 147 is taken from sheet 651 of the Touche-Niven Exhibits.

I have reference to some sheets numbered 642 to 651, inclusive. By that I am referring to the sheets which have been numbered 642, 643, 644, 645, 646, 647, 648, 649,
3604 650 and 651. I understand that those sheets so numbered are part of the Touche-Niven & Company working sheets. When I said they were in evidence here all I

mean by that is that I understand they have been produced before the master by some of my former associates.

3605 (Mr. Mayer offered in evidence Sheet 1 of Larson Exhibit 147. It was received in evidence and marked admitted.)

3606 Said Exhibit shows, among other items, the Capital Stock, Invested Capital and Average Invested Capital during the accounting periods.

(3249) As to how I arrived at the figures shown on lines 7,

3607 8, 9 and 10 of Larson Exhibit 140 I will say that is simply a matter of arithmetic. Those figures are arrived at by deducting from the figures shown on line 2 the figures shown on lines 3, 4, 5 and 6 respectively, that is to say, line 7 is arrived at by deducting line 3 from line 2, line 8 by deducting line 4 from line 2, 9 and 10 by deducting 5 and 6 from line 2 respectively. I had no working sheets on which I based lines 7, 8, 9 and 10. That's simply a matter of deduction on two of the working sheets attached to Larson Exhibit 147. In line 13 of Larson Exhibit 140 I did not merely take 7 per cent of line 1. Line 3 is qualified by lines 11 and 12 which reads "Excess profits capitalized for three years, five years, ten years and fourteen years." I will see as to whether line 13 represents three times the annual average of the profits in excess of interest on capital at seven per cent shown in line 7. In column C I used the period for three

3608 years, which means that the figures under the three year column were procured by using three as a multiplier. In line 13, $1,497,002.30 was multiplied by 3. I arrived at the figure $1,497,002.30 by dividing the figure of $6,412,160.02, shown in line 7, column G of Exhibit 140 by four years three months and 12 days, or 51.4 months.

The first ten lines under column G of Exhibit 140 are supposed to show the totals in the respective lines from 2 to 10 inclusive. Line 7 shows the profits in excess of interest on capital where the interest was computed at 7 per cent. The total of those various profits is $6,412,160.02 for the entire period. In order to get the average profit per year of the accounting period based on the

(3250) profits in excess of 7 per cent interest on the capital, I divided $6,412,160.02 by the four years and some months constituting the accounting period. That gives

3609 me the average profit per year in excess of interest figured at 7 per cent on the capital, or as shown in the

statement. In line 13 under column C I multiply the average annual excess profits so ascertained by 3, and under column D, the five year period, I multiplied that same multiplicand by 5 in line 13. The same method was adopted in arriving at the figures shown in lines 13, 17, 21 and 25 and in columns C, D, E, and F as I have already described with regard to line 13, column C. You will notice that the average profit is shown against those lines in column G, I mean against lines 13, 17, 21 and 25. In other words, referring to line 13, in order to get line 13 under column C, I multiplied line 13 under column G by 3; and in order to get line 13 under column E I
3610 multiplied line 13 under column G by 10. The same method was pursued in the lines 13, 17, 21 and 25 under columns C, D, E, F. The same method was not pursued in column G. The six million dollar item in line 14 is what I understood to be the Wrigley Company's book value of its good will. The same thing is true of lines 18, 22 and 26. My purpose in preparing Exhibit 140 was to show what, if any, good will was created by the Wrigley Company during the accounting period. I thought that the proper way to ascertain that would be to see what the value of that good will was at the be-
3611 ginning of the accounting period and what it was at the end of the accounting period, using the formula that I have stated, and then take the difference between those two as the value of the good will created in the prosecution of the business during the accounting period. Ex-
(3251) hibit 140 does not reflect that calculation because when 140 was prepared we had no data as to the profits during the period prior to the accounting period. When I pre-
3612 pared Larson Exhibit 140 I did not suppose that the good will of the Wrigley business at the beginning of the accounting period was six million dollars. At the time I prepared Larson Exhibit 140 I had no idea what the good will of the Wrigley Company was worth at the time of the commencement of the accounting period. When I prepared Larson Exhibit 140 I did not undertake to tell the master what I thought was the value of the good will during the accounting period, although I had no idea of what the value of the good will at the beginning of the accounting period was. My purpose was to show the excess of the good will prepared on this basis at the end of the accounting period over the book figure of six mil-

lion dollars. As to what my object was in showing that excess and in making out Exhibit 140 in the six million
3613 dollar item, I will say we had no other data to go upon and that was a figure used by the company in segregating their assets. I did not assume when I prepared Exhibit 140 that the good will of the Wrigley business on July 28, 1914, was worth six million dollars. I used the figure of six million dollars because it was the only value of the good will of the Wrigley Company that was anywhere of record.

3614 I recall my testimony where I stated that I needed a statement to ascertain more definitely the value of the good will of the Wrigley Company at the commencement of the accounting period. As a matter of fact I knew from the record that I had examined prior to preparing Larson Exhibit 140 what the sales were of the Wrigley Company for some years prior to the accounting period, and what the advertising expenditures were of the
(3252) Wrigley Company for each of a number of prior years.

3615 I wanted to get information regarding the Wrigley Company's tangible capital and average profits prior to the accounting period so as to enable me to make a computation on the same basis as Exhibit 140 covering the value of the good will at the beginning of the accounting period. I got the information covering the years 1911, 1912 and 1913. The information was from the time that the Wm. Wrigley Jr. Company started to do business. I got the information the same day I asked for it. It was given to me cheerfully. I have made a tabulation or computation on the same basis as Exhibit 140 covering the value of the good will at the beginning of the accounting period based on the 1911, 1912 and 1913 business as well as part of the 1914 business of the Wrigley Company; but it is not in all detail adopted in Exhibit 140.

3616 I am referring now to Exhibit 145. Exhibit 145 is prepared on the same basis as Exhibit 140, but is not prepared in as great detail. Exhibit 140 has calculations based on seven, 8, 9 and 10 per cent interest. There is no calculation on Exhibit 145 based on interest figured at 8 per cent, 9 per cent, or 10 per cent. Exhibit 145 has interest computed at 7 per cent, and at 6 per cent. In Exhibit 140 I take the interest at 7, 8, 9 and 10 per cent, and at no other percentage, whereas in Exhibit 145 I

computed interest only at 6 and 7%. I have made no other computations of the value of good will at the beginning of the accounting period than that shown on
3617 either Larson Exhibit 140 or Exhibit 145. I have made no calculations as to the value of the good will at the beginning of the accounting period, taking interest at 8%
(3253) on the average invested capital, or at 9%, or 10%.
3620-21 Line 16 of Larson Exhibit 140, purports to show the amount in dollars of Doublemint's supposed contribution to good will created during the infringing period, based on Doublemint's proportion of sale, viz., 15.71%. How I arrived at that percentage of 15.71 is shown on Larson Exhibit 147. It is the proportion of Doublemint sales for the period, namely, $8,917,286.90, to all sales for the period, namely, $56,751,952.57. That proportion was taken as a tentative basis. In fact, this schedule, this Exhibit 140, is described as a tentative calculation, and while any figure of that kind should preferably be calculated on the sales year by year, for this purpose it seemed to be permissible to use an average for the entire period. My theory, as disclosed in my testimony, and more particularly in Exhibits 140 and 145 is that the Wrigley Company made large profits in its business, and those profits were substantially in excess of interest on the increased value, whether taken at 6%, 7%, 8%, 9% or 10%. It is not my theory that a valuable good will was built up by reason of the profits. The profits are
3622 only used as a measure of the good will. The profits resulted from the good will. The good will accrued during the period in which the profits were earned, and good will increases in value as profits increase, and good will decreases in value as profits decrease. That's so, broadly
3622 speaking. My theory in presenting these various Exhibits, particularly numbers 140 and 145, is that every branch of the Wrigley business ought to get credit pro rata for the value of the good will. It is rather hypothe-
3623 tical for counsel to state my theory, but I would say that
(3254) it should be spread. It is conceivable that a merchant would make two products, one of which was extremely unprofitable and the other one extremely profitable, and that the net result of the entire business shows very large profits.
3624 I do not think that if a manufacturer makes more than one article and builds up a valuable good will because of

very large profits, that each article ought to get credit for a part of the good will even though the article sells at a loss. In determining whether or not every article made by a manufacturer should bear a portion of a good will that is created, I would want to know the details with respect to the different articles that are manufactured, the cost of the manufacture of the different articles, the overhead applicable to the different articles, the selling expenses applicable to the different articles, and whether or not the different articles are being made and sold at a profit or at a loss, only in cases where the character of the article was so different that these costs might be assumed to bear very different relation to the volume of business in the different articles.

3625 I do not know how the Government classifies chewing gum manufacturers. I do not know what their norm is.

Referring to Larson Exhibit 145, under 1911, 1912, and 1913, I add nothing for excess amount of reserve provided for contingent liability on U. P. S. coupons. For that item in 1915 I add to the net profits for that year $333,549.00, and in like manner make additions to the net profits for 1916, 1917 and 1918 for the excess amount of reserve for U. P. S. coupons. It makes an average per

(3255) annum, as shown by Larson Exhibit 145, of $466,923. I did not include or add the items in that line in line 1 of Exhibit 140.

On Exhibit 145 I have a line entitled "Net Tangible Property at Beginning of Period", and then on that line I have figures under 1911, 1912, 1913 and 1914 showing a total of $13,809,246.00. I included in the net tangible

3626 capital referred to under that subject on that Exhibit all of the assets, less the liabilities, of the Wrigley Company as shown by the statements furnished to me, with the exception of the item of $7,500,000.00 described, I believe as good will and trade marks. To take an actual illustration for the year 1911, I put down $1,500,000 on the Exhibit as net tangible capital at the beginning of the period. I got that $1,500,000 from Larson Exhibit 141, which was a statement of the assets and liabilities of the Wrigley Company as of January 1, 1911, furnished to me by Mr. Cox. I have taken the figure of capital stock $9,000,000, less the item of trade marks, concessions and patents of $7,500,000, leaving a net profit of $1,500,000. I didn't treat patents as tangible capital in arriving at

that figure, but in Larson Exhibit 145 I deducted $88,235 in 1911 from the net profits of the Wrigley Company in that year, on the theory that it was amortization of patents not charged on the books until 1918, so that I reduced
3627 the profits prior to the accounting period by deducting from the profits during each year prior to the accounting period, an average of $88,235 for amortization of patents, but I didn't include any patents in determining the amount of net tangible capital in the business at any time prior to the accounting period. I included patents as part of the net tangible capital during the accounting period. In other words, I made out Larsen Exhibit 140
(3256) upon the theory that patents were tangible capital to be included in determining the average invested tangible capital during the accounting period, but I ignored the same patents and did not consider them as tangible capital in preparing Exhibit 145 and in showing the net tangible capital at any time prior to the accounting period. I have not computed what the good will of the Wrigley Company earned during the accounting period would be worth if I took interest at 8%, 9% or 10% per
3628 annum on the average net tangible capital. As you increase the percentage it diminishes the value of the good will.

In preparing Exhibit 145 I used ten years as a multiplier. I would not say that in preparing Exhibit 145 I assumed that whatever the good will consisted of it would be permanent for 10 years. I would express it by saying that it could properly be capitalized on a ten year basis on the ground that it would yield 10% per annum.

3629 In the case of Tiffany, the manufacturing concern, a court in New York took a ten year period of purchase. I cannot say that I know of any other such case, speaking from memory. I have seen other cases. The case of Tiffany is the only one I can name. I have never read a
3630 case where there was a 14 year period. I have read the report in the Tiffany case. The question arise in the Tiffany case in the determination of the value of good will on the valuation of the Estate of a decedent.

(Mr. Mayer then asked the witness how the question arose, what was the purpose or circumstance or necessity for the coure to find good will in that case. Mr. Aldrich object. The objection was overruled.)

(3257) The occasion of the court valuing the estate of a de-

cedent in that case was, according to my recollection, for the purpose of determining the value of an estate. Tiffany is a large manufacturing jewelry house that has been established for a great many years. I think about 30 or 40 years. I do not know what the profits were in that case. My understanding is that the court in that case investigated the profits of the Tiffany Company for five years prior to the date in which it desired to ascertain the value of the good will, and that it took that five year period, and it then figured interest on the average capital. My recollection is the court figured interest on the invested capital at 6%. That decision was rendered a few years ago. I think it was in the Appellate Division of the Supreme Court of New York. I do not know as of what date it was sought to determine the value of the good will in that case. I have not read that case for nearly a year. I will concede that the rate of interest has been higher during the last four or five years than it was 10 or 20 years ago. I understand that in that case the court held that the average profits in excess of interest on the tangible capital should be multiplied by 10. My recollection is that the Tiffany business was a partnership. I believe that in this particular case the valuation was put on by the Surrogates Court, and that it was affirmed on appeal, but I am speaking purely as a layman. The object of valuing that estate was for the purpose of taxation. There was no question involved in that case as to the allocation of advertising or as to what the effect of advertising would be on the value of good will, so far as I am aware of; or so far as I know, what, if any, rela-
(3258) tionship there is to advertising and good will. I don't know of a single case in which advertising has ever been treated as a deferred asset in a way which I have been doing it as an expert in this case. I do not know of any case in which it has ever been held that good will should be measured by the amount of institutional advertising. I do not know of any case in which institutional advertising has been treated on the books of any concern as good will or as a deferred asset. All the testimony I have given as an expert in this case with regard to good will based on institutional advertising is merely the expression of my own opinion, and is not based upon any actual case that I ever heard of or read of. As to whether I know of any instance, either in or out of court,

in which advertising has been treated as a deferred asset, I will say I know of some cases, some instances, I should say, but they are not parallel to this. But I know of no instance, either in actual practice or in court, where institutional advertising has been treated as a deferred charge or has been measured by the value of good will. In valuing good will, the value of advertising necessarily has had an effect. It is one element to be considered in good will but it is not the sole element. I know of no instance, either in court or out of court, in which good will has been measured by institutional advertising alone. The various elements, which, in my opinion as an expert, enter into the ascertainment of the value of good will, are the profits earned and the tangible capital employed,
3637 and nothing else.

(3259) When I speak of the value of a thing I mean the fair market value that a thing would bring if sold by a willing seller and bought by a willing buyer. Whether the former element was going to continue in the business or not, would have some bearing upon the facts of a particular case in determining the value of the good will. As to whether, if the former management was a bad one, it would have a less tendency to decrease the value of the good will than if the former management was a good one, I will say the effects of the bad management would, nevertheless, be reflected in the profits of the business. I think as soon as one departs from the question of dollars and cents, one gets into speculative realms.

3638 If two partners owned a business, and one was brilliant and capable and the other incapable and indifferent, and the capable one died, I think as to whether or not the value of the good will of such a business would be the same whether it was the capable man that died or the incapable one that died would depend on the size of the institution; would depend also upon whether the brilliant one could be replaced by another man, but if I was called on to put a valuation on the good will of such a business I would want to investigate all those things I have just said now I would want to know. In other words, as to whether the good will of a business would be less if the capable one died instead of the incapable one, would depend on the size of the organization or whether the dead man's place could be refilled.

(3260) Thursday, March 30, 1922. 11:00 A. M.

3640 HERBERT C. FREEMAN, resumed the stand for further cross-examination by Mr. Mayer:

(Mr. Aldrich stated that Mr. Freeman wanted to call attention to a mistake in his tabulation, and that he wanted to make a correction therein. Mr. Mayer said there was no objection to that.)

I found in preparing Larson Exhibit No. 145 that while I had adjusted the profits for the years 1915, 1916, 1917 and the portion of the year 1918 with respect to the excess amount of the reserve provided for contingent lia-
3641 bility on U. P. S. coupons, I had not adjusted the invested capital during that period to correspond; and this, I am sorry to say, was an error on my part which I would like now to correct, and which I have corrected in a revised statement which is now being typed and which I hope to have here in a few minutes.

I also found that an arithmetical error had been made in computing the interest for the period from January 1 to July 31, 1914, and that I have also corrected in the statement which I have now prepared. The result of the error was to increase the apparent amount of the increase in the good will during the accounting period, and for that reason I am particularly anxious to make the correction. The effect of the error in the period 1915 to 1918 was to increase the good will. That is to say, the amount of good will as the statement 145 was originally prepared, was too large as to the figures at the end of the
(3261) accounting period, and it was slightly too large as to the value at the beginning of the accounting. The result of correcting those errors is to minimize the value that I put on the good will created during the accounting period.

3642 I have Larson Exhibit 145 before me, and I have in the presence of the master and at the request of counsel, written certain letters and figures thereon. Those additions now show that 1911 has been lettered as column A. I have designated the columns by writing on them the letters of the alphabet from A to M, inclusive, excepting I, so that the last column "Average per annum" is lettered M. I have numbered each line of figures, that is, each

horizontal line of figures, from 1 to 16, inclusive, so that the top line which purports to show "sales for period" is now numbered "1", and the last line, which purports to show the "Value of Good Will based on Ten Years Purchase of Excess Profits based on Allowing Interest on Capital" at 7% is line 16. That error made a differ-
3644 ence in the amount of interest on capital at 6% per annum of $80,624 in the period from January 1st to July 31, 1914. That mistake would have meant if I had taken 7% instead of 6%, $94,061. If I had taken 8% it would have been still more, and at 10% the mistake would have been still more. Those mistakes were not all against Wrigley's interest. They were in favor of Wrigley. That difference of $80,624 in interest, a mistake in computing the interest in Exhibit 145 was too small. The period of time covered by that mistake in interest computation cov-
3645 ers the period from January 1st to July 31, 1913. That error in figuring interest did not cover any other period of time. It, of course, affected the average per annum for the period of three years and seven months. That error increased the value of the Wrigley good will at the beginning of the period. I consider that Wrigley is bet-
(3262) ter off in this case if the value of his good will at the beginning of the accounting period is high than if the value of that good will at that time is low. It is because I so think that I make the statement that this error of
3646 computing interest amounting to $80,624 was an error in Wrigley's favor. When I prepared Larson Exhibit 145 I intended to prepare a correct memorandum showing what I considered a proper valuation of good will of the Wrigley Company. I intended to correctly show on my theory what the value of the Wrigley good will was at the beginning of the accounting period, and what the value of the good will was at the end of the accounting period, and then my purpose was to deduct the two and assert that the difference was the value of the good will created during the accounting period. In order to ascertain the value of the good will at the beginning of the accounting period I wanted to have full information respecting the Wrigley Company's sales and net profits and tangible assets, and so forth, from the beginning up to the commencement of the accounting period. The sales were not so important, but I used them as a memorandum. In other words, the information shown on Ex-

3647 hibit 145, such as the net profits, the U. P. S. contingent liability, the adjusted profits, the net tangible capital, the interest on average net tangible capital, I thought were all items that were necessary in order for me, in following out my theory, to arrive at a correct valuation of good will. The same information was required by me to ascertain the value of the good will that was established during the accounting period. For the purpose of this statement I only needed such information from the year 1915 to the end of the accounting period. I left out the first five months and three days of the accounting
(3263) period; that is to say, I omit from Larson Exhibit 145 the period beginning July 28, 1914, up to January 1, 1915, because with respect to the period prior to the accounting period, I only had figures covering three years and seven months. I therefore considered that for the purpose of making a proper comparison I should take as near as possible the same length of time down to the end of the accounting period. I accordingly took the three full years and the broken period of the year 1918 as affording a comparable basis. I think it is fair to exclude the first five months of the business of the Wrigley Company, that is, the first five months of the accounting
3648 period. Whether the Wrigley Company's business during the first five months of the accounting period was excessively profitable or excessively losing has no bearing upon a comparison of the value of the good will at the end of the accounting period and at the beginning of the accounting period, as long as the data upon which the value at the beginning of the period is based only goes to the beginning of 1911. I was trying to find out the value of the good will created during the accounting period. I do not think in ascertaining that value it is important to know the particulars of the business during the entire accounting period rather than for only a portion of it. If so much money was spent by the Wrigley Company in advertising during the first five months of the accounting period as to show a terrific loss, I cannot answer yes or no as to whether those circumstances have no bearing on the question as to what the real value of the good will was that was created during the entire accounting period. I will explain how it comes that although I now say I did not consider it at all necessary in preparing Exhibit 145 to take into consideration the

first five months of the accounting period yet when I
(3264) prepared Larson Exhibit 140 I took into consideration the five months period as appears from Column B on that exhibit which is entitled "Tentative calculation of value of good will created during the period of infringement", in column B, be entitled "Five months ended December 31, 1913". Larson Exhibit 140 was a purely tentative calculation of good will, and was prepared in the absence
3649 of any information as to the period prior to the accounting period. When we asked for information prior to the accounting period we were able only to obtain figures covering a period of three years and seven months, and accordingly for comparative purposes I used the figures for the corresponding period ending with the close of the accounting period as a basis for comparison.

3650 In order to ascertain the value of the good will at the beginning of the accounting period, I took in the history of the Wrigley Company during its entire existence up to the beginning of the accounting period. But I did not think it was necessary in determining the value of the good will accruing to the Wrigley business from July 28, 1914, to the end of the accounting period, to take into consideration the entire business during the entire accounting period. I have never suggested since receiving the balance sheets of the Wrigley Company for 1911, 1912, and 1913, that I desired in any way to correct Larson Exhibit 140.

I will not admit that Larson Exhibit 145 would be
3651 more reliable if, if in fact, I had included the business during the five months ending December 31, 1914. I don't think the basis of comparison would be a fair one. If I was going to find out on my theory the value of a good
(3265) will during a certain period of time immediately following the commencement of a corporation,—as to whether I would want to know the history of that business as to net profits, tangible capital, and so forth, would depend how long after the formation of the corporation I was making the computation. If the corporation had been in existence for some ten years, I might only want to take the last five years. The same thing would apply if the corporation had been in business for eight or nine years. I would in each such case, if the figures were available, use the entire five years. That would depend, to

3652 some extent upon any exceptional conditions which I found existed during that five year period.

In order to value good will on my formula, I would have to know what the tangible capital is during the period covered by the period in which I am using the profits as a basis for computing the good will.

If I had found in this case that the average excess profits of the Wrigley Company over so-called normal profits, from January 1, 1911, to July 28, 1914, had been, say, $5,000,000 and I also had found that from July 28, 1914, to the end of the accounting period the average profits of the Wrigley Company had fallen to a million dollars a year, that would not have affected my formula for ascertaining the value of good will created by the Wrigley Company during the accounting period; but it would have affected the number of years purchase and the interest on capital. I should regard a business showing those conditions as being less stable than the Wrigley Company. As to whether, in order to apply my formula and before determining whether the multiplier shall be ten or some other number, I would want to know what the profits of the concern were during the entire account-
(3266) ing period, I will say I should want to know for a
3653 period longer than the accounting period. I would want to know for as long a period as I could get. I would want to know what they were for at least the entire accounting period.

I prepared Larson Exhibit 139. I have it before me now. One of the reasons that I prepared Larson Exhibit 139 was to show that there was a constant diminution in the percent of advertising compared to sales, and in preparing that statement I took the pains to show the sales of all brands from the 28th of July, 1914, to the 31st of December, 1914, and the amount of advertising spent during that period and the amount to be charged off for reserve for United Profit Sharing coupons. That percentage appearing on Exhibit 139 is 24.13%. That is to say, the
3654 per cent. of advertising from July 28, 1914, to December 31, 1914, to the sales of all brands during that period was 24.13. That is the highest percentage that the advertising bore to the sales during any portion of the accounting period. And that percentage justifies the mathematical statement that the percentage was highest during the first five months of the accounting period.

3655 I prepared Exhibit 139 for the purpose, among other things, of proving to the master that the per cent. of Wrigley's advertising to his sales during each period of the accounting term was diminishing. It was my purpose in preparing Larson Exhibit 139, to establish the fact that the amount of advertising compared to the amount of sales was diminishing and thereby showing that the good will being established by the advertising was being constantly increased during the accounting period.

(3267) According to my opinion, what happened during the
3656 period from the 28th of July, 1914, to the 31st of December, 1914, does have a bearing upon the question of what good will was created during the accounting period.

If there were any abnormal conditions in a business during any part of an accounting period, whether I would take those normal conditions into consideration in undertaking to ascertain the value of a good will created during the accounting period, would depend entirely upon the nature of the abnormal conditions. For example, during the accounting period the business has been charged with very heavy taxes which are decidedly abnormal, but which I have not taken into account in the sense of using them to modify my figures.

I investigated the per cent. of Wrigley advertising to Wrigley sales during the period from January 1, 1914,
3658 to July 28, 1914.

I obtained the sales of the Wrigley Company for the first seven months of 1914 from page 906, and the advertising during the same period from page 833 of the record.

(3268) Thursday, March 30, 1922.

3659 HERBERT C. FREEMAN resumed the stand for further cross-examination by Mr. Mayer.

I have produced here package consisting of nine sheets, all in lead pencil. They are all in my handwriting except that on the third sheet there are some percentages carried out to two places of decimals, which were inserted by an assistant to whom I delegated the work of compiling
3660 these percentages. Mr. Hagberg, I believe, was the assistant. My own rough figures for these percentages also

appear on this sheet. The eighth sheet is entirely in the handwriting of Mr. Whitworth, and on the ninth sheet some of the figures are in the handwriting either of Mr. Vincent or Mr. Hagberg; I am not sure which; and the remainder are my figures. (The said working sheets produced by the witness Freeman were marked for iden-
3661 tification Larson Exhibit 148, Sheets 1 to 9 inclusive.) Sheet 1 of Larson's Exhibit 148 was prepared on Monday evening of this week, during the adjournment following the time I was on the witness stand. Sheet 2 was prepared at the same time. It is of a very rough character and the figures on it don't mean very much to me at the present time. Sheet 3 as to all of the figures which are in my handwriting was prepared on Sunday, last Sunday, the day before I took the witness stand. The percentages in the handwriting of an assistant were inserted on Monday. The purpose of preparing that sheet 3 was to ascertain the ratio of advertising to sales beginning with 1904 and ending in 1918, as shown by the figures testified to by Mr. Stanley al-
3662 ready in the record. I made an investigation to find out whether the amounts reported by Mr. Stanley to have been paid out for advertising were in fact paid out. I did this only by comparison with the Touche, Niven report, and I was not able to agree them actually, but the differences were not so material as to make me feel justi-
(3269) fied in thinking they were incorrect. I understand Mr. Stanley's figures to include the item of trade dis-
3663 counts. I personally feel that that is hardly a proper item to include in advertising, but the amount is not proportionately considerable. If Mr. Stanley included trade discounts in the advertising it so appeared in the record I read. There was no attempt to conceal what Mr. Stanley did include in his advertising and he did not conceal it. I know that in the account filed before the Master by the Wrigley Company the method adopted was to make certain deductions from the receipts from the sales of Doublemint and that among these deductions was an item described in the filed account as "Trade discounts, allowances to jobbers". The figures in the Touche, Niven report, which are the only figures I have seen as to the Wrigley, accounting, show the item of Trade Discounts as a separate item.

3664 I am looking at Exhibits A-1 to A-7 of the Touche,

Niven report filed with the Master. As to whether it is not a fact that Touche, Niven & Company in their filed report themselves say that the amount of trade discounts as reported by the Wrigley Company for the entire accounting period is $57,087.34, I will say that is the only item that is shown separately, but I believe there are trade discounts included in the item of overhead expense. I don't know whether the trade discounts included in the overhead were or were not included in the advertising. I have not been able actually to agree the total stated by Mr. Stanley with the details shown in the Touche, Niven report, but, as I said before, the dif-
3665 ference is not very great. I didn't think it necessary to reconcile the differences shown by the Wrigley figures, because my purpose in preparing these figures was to compare the percentages as shown by Mr. Stanley for the entire period, and I felt that the one period would be comparable with the other. Referring to sheet 3 of Larson Exhibit 148 for identification, my purpose in prepar-
(3270) ing it was to ascertain substantially the percentage which the advertising as reported by the Wrigley Company bore to the sales of the Wrigley Company for the period from 1904 to 1918. I wanted to show that by years. The percentage of advertising to sales as shown
3666 by sheet 3 were found to be 1904, 16.84%; 1905, 18.34%; 1906, 17.53%; 1907, 16.75%; 1908, 19.11%; 1909, 20.53%; 1910, 15.97%; 1911, 20.10%; 1912, 14.58%; 1913, 20.86%. January 1st to July 31, 1914, 29%; August 1 to December 31, 1914, 27.01%; 1915, 21.74%; 1916, 20.00%; 1917, 15.53%; 1918, 14.16%. Sheet 3 shows that the sales from 1904 to July 31, 1914 amounted to $41,472,986.92, and that the amount of advertising as reported by Mr. Stanley from 1904 to July 31, 1914 amounted to $8,074,081.59. Sheet 3 shows
3667 the percentage of total advertising from 1904 to July 31, 1914 to be 19.47. That sheet also shows that the sales from August 1, 1914 to December 31, 1914 amounted to $3,522.732.30. I am not sure that Mr. Stanley testified as to that figure but I obtained it by deducting from $8,008,-536.07, the sales for 1914, the sum of $4,485,803.77. That sheet also shows that I took the advertising from August 1, 1914 to December 31, 1914, as being $951.468.23. It also shows that I figured the percentage of $951,468.23 being the advertising from August 1st to December 31,

1914, to $3,522,732.30, being the sales during the period
3668 last mentioned. I found that percentage to be 27.01. In other words I found the percentage of advertising to sales from January 1 to July 31, 1914, to be 29% and the percentage of advertising during the balance of 1914 to sales in the same period to be 27.01%. That sheet also shows the sales and the advertising and the percentages of advertising to sales as follows: 1915. Sales, $9,717,-145.33. Advertising per Stanley, $2,112,895.66 Per cent 21.74. 1916. Sales, $12,482,342.87. Advertising per Stanley, $2,496,601.01. Per cent 20.00. 1917, Sales, $15,713,-
(3271) 657.84. Advertising per Stanley, $2,440,739.75. Per
3669 cent 15.53. January 1 to November 12, 1918, sales, $15,-316,074.23. November 13 to December 31, 1918, sales, $1,845,860.63. Total, $17,161,934.86. Advertising $2,430,-315.98. Per cent 14.16. There are certain totals under those figures appearing on sheet 3. One of those totals appears to be $55,075,080.90. In the advertising column are some figures underneath the amount of advertising for the period from November 13th to December 31st, 1918 at the place where one would expect to find a total reading $9,480,552.40. The last two mentioned totals, namely, the $55,075,080.90 and the $9,480,552.40 are the total of the sales and the advertising per Stanley, respectively, from the years 1915 to 1918, inclusive, the four
3670 years. That includes no part of 1914.

(Mr. Mayer offered in evidence said Larson Exhibit 148, sheet 3. It was received in evidence and marked "Admitted".

3671 Larson Exhibit 148.

3672 I have also made a total of the sales for the years 1910, 1911, 1912 and 1913, which is shown on the sheet as $26,561,783.86, and a total of the advertising per Stanley for those four years showing a total of $4,821,297.10. At the foot of the sheet I have computed the percentage of the advertising during those four years to the sales during those four years as 18.1% and the percentage of the advertising during the four years 1915 to 1918, inclusive, as 17.2%. Sheet 1 of Exhibit 148 is a rough memorandum which I made of the sales and the profits for the following periods: 1911, 1912, 1913 and January 1 to July 31, 1914; 1915, 1916, 1917 and January 1 to November 12, 1918. It also contained a rough memorandum of the net tangible capital in the Wrigley business from

January 1, 1911 to December 31, 1913, by years. This paper was a rough scratch paper and I should have to
(3272) think a good deal before I could decide what some of the other figures on it mean, but it was primarily a memorandum for my own purpose to compare the sales and the profits and the relation which the profits bore to the sales in the periods and the capital of the Wrigley business in the period prior to the accounting. I didn't want to compare anything with the capital or the net tangible capital used in the Wrigley business during the accounting period. I wanted to see the relation shich the profits bore to the capital. I did not particularly want to see the relation which the invested capital bore to the sales. I hadn't that in mind. I said that sheet
3673 2 was in my handwriting. I thought it was, but I see there are some totals on there which are not in my handwriting. I can tell the purpose for which I had sheet 1 of
3674 Exhibit 148 prepared. I turned that sheet over to the assistants, to be used by them in the preparation of Larson exhibit 145, which they prepared under my direction; and the figures which are shown are the averages of the sales for the two periods which appear on Larson exhibit 145 as "Average per Annum" in the two periods, namely $7,423.969 appearing in Column F, line 1, of exhibit 145, and $13,766.177 appearing in column M, on line 1, of the same exhibit. The word "capital" on sheet 1 of Larson Exhibit 148 is in my handwriting, so are the figures underneath it and the figure $10,374,274.81 and the computations leading to that total. Those figures respecting capital were the figures which I set down as the net
3675 tangible capital averaged for each of the years from 1911 to July 31, 1914. I mean the average net capital. That total of $10,374,274.81 means the total of the average for the three years 1911, 1912 and 1913.

(Mr. Mayer offered in evidence the sheet marked Larson Exhibit 148, sheet 1. It was received in evidence and marked "Admitted".)

(3273) Said exhibit shows inter alia sales by periods and
3675 the following profits during the same periods, viz., 1911 —$1,490,074.47 1912—$2,084,154.49 1913—$2,343,213.77 1/1-7/31/14—$909,573.45

The witness continued:

(3274) Sheet 5 of Larson Exhibit 148 shows sales, $56,751,-
3676 952.57, from the 28th of July, 1914 to the 12th of Novem-

3677 ber, 1918, and it also purports to show the amount of the Wrigley Company's advertising during the same period as adjusted by Touche, Niven & Company's Exhibit O, amounting to $5,505,340.97 and then there is a column showing what percentages the advertising bears to the sales during the respective periods included within the dates named. I didn't use those percentages in Exhibit 139 that I filed with the Master.

(Mr. Mayer offered in evidence sheet 5 of Larson's Exhibit 148. It was received in evidence and marked "Admitted".)

3678 Larson Exhibit 148, sheet 5. With regard to that ex-
3679 hibit 148, sheet 5, the figures appearing in that sheet for advertising are a set of figures prepared by Touche, Niven & Company and shown as exhibit O in their report, which, however, are not in agreement year by year with the figures shown in the Wrigley accounting, but are based upon a hypothetical method of spreading the advertising over the different years. By "report" I mean Larson's Exhibit 132. As to whether as an expert accountant I endorse the theory adopted in Exhibit O I will say that I would not accept it as a theory of my own. As to whether I did not say in answer to one of Mr. Aldrich's questions that I at no time disagreed with any part of Larson's Exhibit 132 I will say that that exhibit does not form a part of any of the conclusions reached in the report. My impression is that it is given purely as a separate exhibit and is intended to be suggestive only of one method of dealing with the item of advertis-
3680 ing, but that it has not been given effect to in any of the tabulated accounts. As to whether my position is that
(3275) there is nothing in the body of Touche, Niven Exhibit 132 which approves of Exhibit O attached thereto, and therefore that report or that exhibit must be taken for what it is worth and that I disapprove of the exhibit, I will answer "No". I don't say I disapprove of the exhibit. I said I did not adopt the theory under which Exhibit O was prepared but I did not say that I disagreed with it.

3680 "Q. Do you agree with the theory under which exhibit O was prepared, or do you not?

A. I should not adopt it as a theory of my own.

Q. Would you refuse to adopt it as a theory of your

own because, in your opinion as an accountant, it is not a sound theory?

A. No, sir, I should not adopt it because I think there is a better theory.

Q. Do you think that the theory of exhibit O is sound or not?

A. I think it is sound, yes.

Q. When you say you think there is a better theory, you mean there is a theory which, if adopted, would give
3681 Larson more money, don't you?

A. No, sir.

Q. Well then, do you wish to be understood as saying that there is more than one theory that honest accountants might adopt with regard to the deferring of the value of advertising?

A. Yes, sir.

Q. You yourself in the case at Bar disapprove of adopting the theory of deferring the advertising as shown in exhibit O, do you not?

A. I have already testified that I have not seen that theory adopted in any case which has come to my attention and I accordingly feel that it has not sufficient sanc-
(3276) tion behind it.

Q. Do you feel that way merely because you have never seen the theory shown in exhibit O adopted in practice?

A. Yes, sir.

Q. Now, I will ask you to answer the next to the last question.

The Witness: Please read it.

(The question was read).

The Witness: Read my answer, please.

(The answer was read).

Mr. Aldrich: I submit that is an answer.

Mr. Mayer: Is the Master satisfied with the answer? I will say I am if you are.
3682

The Master: I don't think that is an answer. Why can't you answer that question yes or no? You have already made a qualification, but I think counsel has a right to know your opinion.

Just read the question again and see if the witness can answer it.

(The question was read)

A. Yes."

My opinion is that the Wrigley advertising has a value which would extend over several years. The number of years is problematical. It might be 3, 4 or 5 years. Based upon my knowledge of the Wrigley Company's advertising during and before the accounting period, I think that advertising retains a value indefinitely as long as it is
3683 supported from year to year by a judicious amount of expenditure for new advertising. As to whether if there were no new advertising I think the advertising of the
(3277) Wrigley Company during the accounting period would retain value, I will say I think I could best answer it by saying that your question is exactly parallel to asking how long a building would retain a value if there were no money spent for maintenance. It would depend largely on outside elements; it would depend on whether the competitors of the Wrigley Company took advantage of their inaction to engage in any extensive campaigns of advertising, but if the Wrigley Company and its competitors stopped advertising at the same time, the value in my opinion would last for a great number of years. I do not want to fix any definite period of time during which the Wrigley advertising during the accounting period would survive beyond the accounting period. My opinion is that it would extend for several years. My
3684 opinion is that it would definitely extend beyond three or four years. I do not think it would extend fifteen years, nor ten years. If the Wrigley Company had discontinued advertising immediately after the accounting period they would have an appreciable or substantial benefit from it seven years thereafter if their selling methods otherwise had been wise. I have no basis upon which I can answer the question as to what opinion I have as to the value of the good will of the Wrigley Company's business November 12, 1918, if they had in fact discontinued advertising thereafter. I mean by that that the nature of the Wrigley Company's business is such that, in spite of the tremendous momentum that it has built up, it must spend a certain amount year by year for advertising as long as its competitors continue to advertise.

3685 As to whether I pretend to know what would be an amount of advertising which the Wrigley Company would have to indulge in om order to obtain a normal amount of trade, I would say the percentages in the case

of the Wrigley Company itself show that they can enjoy
(3278) a very substantial increasing volume of trade with an average expenditure or from seven to eight per cent. I cannot say what percentage of the trade of the Wrigley Company is due to advertising and what percentage of the sales is due to other causes. In my opinion the Wrigley Company did not spend $2,600,000 for advertising in 1916. I am speaking of the fact that those figures include the reserve set up for contingent liability on U. P. S. coupons which in my opinion is excessive.

Larson exhibit 148, sheet 3, contains in my opinion what purports to be the amount spent by the Wrigley Company for advertising according to Mr. Stanley. In the year 1916 the amount so spent appears to be $2,496,-
3686 601.01. As to what my justification is for saying that that sum includes an amount for contingent liability on account of the U. P. S. coupons I will say my justification is that working with Mr. Whitworth I made a tabulation of the items shown in the Touche-Niven report, Exhibit No. A-3, for items which appeared from Mr. Stanley's testimony to be included in his figure for advertising, viz., advertising $1,452,828.77; amount paid for United Profit Sharing Coupons $516,306.42; contingent liability for unredeemed United Profit Sharing Coupons, $475,102.33; printing United Profit Sharing Coupons, $8,783.26; trade discounts, allowances to jobbers, $130,783.90. The total of these is $2,583,804.68, which is $87,253.67 in excess of the figure stated by Mr. Stanley. As I have already said, we were not able to agree the figures testified to by Mr. Stanley during this accounting period. If the amount shown on exhibit A-3 of the Touche-Niven report, viz. $1,452,828.77, had not been spent for advertising during the year 1916 I do not think the business of the Wrigley Company would have made the same showing during the period. If the Wrigley Company had not expended about
(3279) $1,500,000 for advertising in the year 1916 I do not think its net profits during that year would have been as much. Exhibit A-2 of the Touche, Niven filed report shows that the Wrigley Company expended $1,564,150.43 for advertising during 1915.

(3280) In my opinion the Wrigley Company would not have made as much profits in 1915 if they had not spent that amount for advertising for that year, nor as much net profits between July 28, 1914, and December 31, 1914, if

they had not spent for advertising during that period the $850,091.75 shown by Exhibit A-1 attached to the Touche Niven & Company report. The spending of those moneys for advertising during each of the years and subdivisions of the accounting period increased the net profits of the Wrigley Company. My opinion is that the Wrigley Company was wise in expending what they did for advertising during the accounting period. I have
3689 been informed that at some period during the accounting period the Wrigley Company introduced a new gum, viz., Juicy Fruit. I do not think the net profits as I computed them, of the Wrigley Company, during the accounting period would have been the same as they were if they had not expended what they did to advertise Juicy Fruit during the accounting period. In other words, in
3690 my opinion it was wise for the Wrigley Company to extensively advertise Juicy Fruit. I claim that all of the advertising of the Wrigley Company helps all of the brands sold by the Wrigley Company.

I made no investigation to determine what the different sales were of the different advertised brands and of the different brands that were not advertised.

As to whether the successful introduction of a new article requires a greater amount of advertising than to maintain the sales of an article already advertised, depends how closely the new article is related to the prod-
(3281) ucts previously sold by the same company.

Page 6 of the Touche Niven & Company filed report shows that from October 1st to December 31st, 1914, the percentage of agate lines used for advertising Spearmint in newspapers was 6.13% of all the advertisements in newspapers during the same period of time covering
3691 Spearmint, Doublemint and Juicy Fruit. That report also states as a summary of the Wrigley Company's apportionment of agate lines that 93.87% of the agate lines carried in newspapers during that period advertised Doublemint.

I have made no examination or measurements myself of the aggregate lines actually advertised. I do not mean to question the correctness of the measurements.

That same statement on page 6 of the Touche Niven & Company report also shows that in the year 1916, 167 agate lines were carried in newspaper advertisements of Juicy Fruit as against 6634 agate lines of Spearmint

and 6699 agate lines of Doublemint. The same tabulation shows that only 1.24% of the agate lines of the newspaper advertisements for the year 1916 advertised Juicy
3692 Fruit. It also shows that in the next year, 1917, Juicy Fruit bore 34.86% of the total agate lines carried in newspapers for that year. And that Spearmint carried 32.62% and Doublemint 32.52%.

It appears, assuming that the measurements were right, that 93.87% of the agate line space in the newspapers from October 1st to December 31st, 1914, was used for Doublemint. That tabulation demonstrates that as a new brand was being introduced by the Wrigley Company, they sought by their advertisements to emphasize that brand.

(3282) My opinion is that that is a sound way to advertise and conduct a prosperous business.

I recognize the fact that a going concern seeking to
3693 introduce a new product or a new article will emphasize that new article in its advertisement, and my opinion as to the advertising which I saw was that advertising of the Wrigley Company was of a nature to benefit all of the products of the Wrigley Company even in those advertisements in which emphasis was laid on Doublemint.
3694 I am referring to the advertising during the accounting period as shown in the seven volumes of advertising which were exhibited to me at the company's office. I have seen an advertisement that emphasizes Doublemint. I saw advertisements which advertised nothing but Wrigley's Doublemint. In my opinion those advertisements which I saw and which advertised nothing else except Wrigley's Doublemint did not assist the sales of Juicy Fruit and Spearmint as much as it assisted the sales of Wrigley's Doublemint. In my opinion the advertisements of Wrigley's Juicy Fruit alone do not benefit Wrigley's Doublemint as much as Juicy Fruit.
3697 In my opinion a brand not specifically advertised does not get as much benefit from an advertisement as the brand which is therein specifically named. I made no investigation of the extent to which separate brands dealt in by the Wrigley Company were advertised.

My investigation as to the extent to which Wrigley's Doublemint alone was advertised was confined to the hour or so I spent in fingering the seven volumes of advertising and from personal observation of advertising out-

(3283) side. In giving my opinion before the master that 50% or more of all of the advertising of the Wrigley Company is what you call institutional, I base it on that short examination I made of those seven volumes plus what I had observed in traveling through the country. Referring to my observations other than the inspection
3698 of the seven volumes, I would say that I include in that all of the observations that I have had whether by seeing Wrigley's advertisements in newspapers or magazines or street cars or on walls or bill posters right down to the present time.

Mr. Stanley was in the room all the time I examined those seven volumes of advertising. I thought he was there all the time, but he may have gone out. J. Angus Steven was there. He has been here while I have been on the witness stand. Mr. Vincent was also there. He has been here all the time I have been on the witness stand.

I spent approximately an hour to an hour and a half
3700 looking at those books. I could not tell by actual count how many copies of advertisements there were in those books. There were a great many duplicates. I should say as a guess there were about 2,000 advertisements in those books. The memorandum I have been reading is a memorandum of the number of volumes which I saw and the portions of the volumes which were included in the period as indicated to us by Mr. Stanley.

3701 When I spoke of 50% or more of the advertisements being institutional I only meant that the word "Wrigley's" takes up so much space and is printed so conspicuously that the institution or the corporation "Wm. Wrigley Jr. Company" is being advertised.

(3284) Friday, March 31, 1922. 10:30 A. M.

3702 HERBERT C. FREEMAN, resumed the stand for further cross-examination by Mr. Mayer:

I wrote a paper, which I think was called "Some considerations in the valuation of good will". It was delivered before the annual convention of the American Institute of Accountants, and it was printed in the Journal of Accountacy. I believe it was October, 1921. I am not
3703 sure. I have not a copy of it here. That was delivered

after my firm of Touche, Niven & Company had been employed as experts in the case now on hearing.

This paper was prepared and was written after I had been consulted with regard to the establishment of a good will and a deferred value for advertising in the case on hearing.

I left Touche, Niven & Company January 10, 1921, and since then have been connected with the National Cloak & Suit Company, to which I have devoted all of my time since January, 1921, with the exception of the time I have spent on the case on hearing.

As to how much time I have devoted to the case on hearing, I will say previous to January, 1921, I spent a few hours at different times either consulting with Mr. Whitworth or in correspondence with Mr. Whitworth on the subject. Subsequent to January, 1921, my recollection is that I spent no time on it until the late Fall of 1921 when Mr. Whitworth consulted me once or twice on different aspects of the matter and intimated that Mr. Aldrich would like me to appear as a witness in the matter. Then between that time and the day I left New York to come here, last Saturday, I spent several evenings going over the testimony and the Touche-Niven re-
(3285) port. I spent all the time between Chicago and New York in February on the train going over the Touche-Niven report, and all of the time coming back to Chicago last Saturday going over the report and preparing memorandum.

On the occasion of one of my visits to Kansas City early in February, I was in Chicago on my way back to New York, I believe the 11th of February, and I then had a conference with Mr. Whitworth, and Mr. Whitworth introduced me to Mr. Aldrich. I have also talked with Mr. Whitworth in New York at different times between the late Fall and the present time. I think the last occasion was early in February, that's my recollection, just before I left to come west to go to Kansas City.

I do not believe I spent any time on this matter between January 1 and January 10, 1921.

3706 After I became associated with the National Cloak & Suit Company I was first spoken to regarding this case in November or December, 1921. Before the preparation of Larson Exhibit 132 I was consulted with respect to certain aspects of the matter and of the accounting. I

should hardly say specifically as to the preparation of the report. I was consulted before I went with the National Cloak & Suit Company by members of Touche,
3707 Niven & Company. Mr. Whitworth was one, and I think I probably talked with Mr. Vincent.

While I was a member of Touche, Niven & Company I talked to Whitworth and Vincent as to the distribution of advertising particularly, the question of the effect of good will on advertising and of advertising on good will, the question of interest on capital, depreciation of patents, some items of expense in connecton with the fac-
(3286) tory, I believe in Brooklyn, which the company had to vacate, the treatment of the Pulver Notes, the question of contingent liability on U. P. S. coupons. There may have been some other matter of minor importance which I don't remember at the present time. Was also consulted about income and excess profits tax.

I have talked with Mr. Aldrich about this accounting. I have talked with no other lawyer with respect to any of the matters referred to in Larson Exhibit 132, or with
3708 respect to any of the matters to which I have testified. That is true regardless of time. I have discussed with a great many lawyers the principles to which I have testified, but not in relation to this case.

Neither Edward S. Rogers nor Frank F. Reed has ever been an attorney for the National Cloak & Suit Company so far as I am aware.

3709 Mr. Solomon G. Rosenbaum is president of the National Cloak & Suit Company. Mr. William Rosenbaum is the secretary. I am vice-president and general manager. The other vice-presidents are Mr. H. S. Rosenbaum, Mr. Frank Boker, Mr. Z. D. Bernstein and Mr. P. M. Farrell. Mr. Farrell is manager of the Kansas City branch. Mr. M. J. Biehn is treasurer. Those are all the principal officers. There may be one or two assistant secretaries or assistant treasurers, but I am not sure as to that.

My duties in connection with the National Cloak & Suit Company are those of general manager, having supervision of all the departments of the business in a general way. I am not a merchandise man. We have a merchandise manager who is one of the vice-presidents. I have not had any experience in conducting a business except-
(3287) ing as I may have acquired since January, 1921, or

such as I may have learned as an accountant. I have not been connected with any business until I went with the National Cloak & Suit Company, outside of the accounting business. I am 39 years of age.

The National Cloak & Suit Company is a mail order house doing business directly with the consumer. It also has two outlet stores, one in New York and one in Kansas City for the purpose of disposing of surplus stocks. The New York and Kansas City stores are places at
3711 which goods are sold at retail. Those retail stores handle wearing apparel and such articles as piece goods, blankets, curtains and similar textiles only. They do not handle a general class of merchandise such as is generally found in department stores. Those stores handle male, female and children's wearing apparel. They do not handle musical instruments or graphophones, although for a time they sold phonographs and records. We may have sold some machines and records at the re-
3712 tail stores, but it would be a very small matter, and we discontinued it. They were carried in our catalogs also at one time. I cannot answer yes or no as to whether phonographs and records were discontinued because they were being sold at a loss. There were other considera-
3713 tions. They were discontinued because, in our opinion, it was not possible to sell them at a profit unless they were sold on the installment plan and we were not prepared to sell them on the installment plan.

I do not claim to be an advertising expert.

(3288) I have some general supervision of the advertising
3714 which we do. But that is primarily in the hands of one of the vice-presidents and he is supposed to be the expert advertiser. Before I became connected with the National Cloak & Suit Company I had no experience at all with respect to advertising, only as I may have seen it in my accounting work.

The National Cloak & Suit Company advertised its graphophones in the catalogue which was sent out to our customers. That is the only way by which they were advertised.

3715 Our concern makes a charge on its books for a deferred value of advertising only to the extent of the proportionate part of the cost of the catalogues in the hands of the customers from the termination of an accounting period to the end of the life of the book. The life of the book

is either the period definitely stated as that within which the prices hold good and the goods are offered for sale, or it is until a new catalogue is issued superseding the old one. We issue four catalogues each year. There are
3716 occasionally small booklets, but they are quite incidental.

We issue a January book which on the face of it states that it is good until February 28th. We issue a spring and summer catalog which reaches the customer sometime in February and remains current until the Fall book is issued sometime in August. We issue a mid-summer book which reaches the customer about the first of June and remains current until sometime in August and we issue a Fall and Winter book which reaches the customer sometime in August and remains current until the issue of the Spring book in February. None of the books bear any specific termination date, except the January book.
(3289) The expense of the January book is charged to catalog expense on our books. As to whether we have an account on our books called "Catalog expense", I believe
3717 we call it "Sales Promotion".

As to how in preparing our accounts at the end of January we should treat the expenditure for the January book, I will say we should charge off such a proportion of the cost of the January book as we believed corresponded to the proportion of the total sales from that book which we had received in the month of January. The balance will be carried forward as being applicable to the sales which we expect to get from that same book in the month of February. The total expense paid out for our January catalog will be taken up in its entirety in the month of January and the following month of February.

3718 The spring catalog that was issued and is current until we issue our Fall book in August, is called the Spring and Summer catalog. So far as I recall, I have made no statement in one of my prior answers that we distributed
3719 the expense of the catalog proportionately. I testified that the conclusions which I have given here as a witness are influenced by what I say is my knowledge of the rules laid down by New York courts with respect to ascertaining the value of good will. I used 10 years as a multiplier in arriving at that value. I cannot name any other case besides the Tiffany case in which 10 years was used for

a multiplier in arriving at the value of good will, but I have heard of others.

3720 I don't know as a matter of fact that in the great bulk of cases the New York courts adopted less than three years for the multiplier. I don't know as a matter of (3290) fact the New York courts adopted 3 years as a multiplier in more cases than is adopted any other multiplier. I have not read all the decisions. I have read the cases mainly from the point of view of getting the extent, if any, to which the court have followed or have not followed the practice which has been common among accountants I should say for at least half a century in valuing good will. I mean to say that it has been common practice among accountants to follow the formulae that I have given in this case. As to whether they used 10 for the years of purchase, that is a matter which differs in every case. I am unable to say to what extent the multiple 10 has been used or any other multiple.

It is too broad to say that the formula which I have adopted in my testimony in arriving at the value of good will has been uniformly in use by accountants for many years. I would rather say it has been very generally used. There may be other methods.

By my testimony, I mean to say that in my opinion the most reliable, the most honest, the fairest, the most scientific method of arriving at the value of good will is to ascertain the average profits of the concern for preferably five years and deduct therefrom the average interest on the average tangible business during those years and then to multiply the balance by some appropriate multiple which I speak of as the number of years of purchase. It might be necessary in some cases to consider any extraordinary items which have entered into the determination of the profits.

3721 I do not believe I know of any decision by any court outside of the State of New York on this question of how to value good will.

(3291) In answering the question with regard to what I considered the best and most scientific basis I would like to add that in cases where the extraordinary items entering into the profits are such as to make that an unreliable basis I am rather of the opinion the number of units sold has a distinct bearing upon the value of good will.

3723 I do not say that in ascertaining the profits of a con-

cern, it will be measured in part by a consideration of the good will of the business.

3724 The question of good will is directly related to the question of profits. When the National Cloak & Suit Company, by way of illustration, proceeds to ascertain what its profits are in 1921, it does not take into consideration at all the question of the good will of that business. The profits of that institution for 1921 are not increased or diminished or affected in any way by considering the question of the value of the good will of the concern. The value of the good will was established at the formation of the Company, and we do not re-value our assets. We make up our accounts on an income and expense basis. In fixing my value of good will in this case, I did not take into consideration specifically the amount of Wrigley Company's sales during the accounting period. The sales during the accounting period, whether they were increasing or decreasing, are reflected in the profits.

3725 It is conceivable that sales will be diminished in dollars and yet the profits therefrom increase. It is my opinion that in order to properly and fairly ascertain the fair value of a good will, I ought to know what the sales were during the period under consideration. That would be one of the questions which should be considered to determine whether there had been any extraordi-
(3292) nary items entering into the determination of the profits.

I would not expect any disinterested party to act on any opinion of mine with respect to the value of a good will without investigating "that question of sales".

As to whether I am employed in connection with this case on a per diem basis, I will say I have never discussed the question of remuneration in this case at all except with Mr. Whitworth who before he left town the other night asked me if I wished to send my bill to him
3726 or to Mr. Aldrich and I replied that I had never even considered what I should charge or what would be a proper charge to make for my services. The question had never been raised in any way before. For the present, I am paying my own expenses while here and I advanced my own traveling expenses. I expect to recover those, however. I really haven't given very much thought to the basis on which I expect to be paid for my

time. My opinion was I would charge on a per diem basis approximately as I would if I were still an accountant. If I were still an accountant I would have charged $100.00 per day. That would have been charged if I had rendered services as an accountant in the city of my home. It was not my custom to charge more when I left home. Of course, that sum would be in addition to my
3727 actual outlays for transportation and hotel bills.

I have Exhibits 141 to 144, inclusive, in my hands. With those exhibits before me, I will have to make a computation to state what the average invested capital was for the year 1911 arrived at on the basis as the average invested capital was calculated in preparing Larson Exhibit 140. I am not sure that I have the necessary data here. I can explain, however, very shortly what I should need. I should need to know the amount of the
(3293) accumulated reserve for amortization of patents up to January 1, 1911, and December 31, 1911, which was not on the books at that time, but was put on the books by the company in December, 1918. I do not know what
3728 that is up to those dates. It is not on my Exhibit 145. That is only the annual amount. I don't know how far back that annual charge extended. The figure won't be correct without that item of reserve for amortization, but I will have to express it this way, that the net capital at January 1, 1911, disregarding the amortization of patents, would be $3,000,000, and the net capital at December 31, 1911, on the same basis would be $4,197,574.47, making a total of $7,197,574.47, the average of which is $3,598,787.24. That figure, of course, differs from the figure shown on Exhibit 145 to the extent of $1,500,000 which is the book value of the patents disregarding the accumulated amortization up to that date.

Taking the amortization of patents on the same basis that I took in Exhibit 145, line 3, for the same period,
3729 that is, 1911, and assuming that the patents were valued at a million five hundred thousand dollars January, 1911, and that the amortization was on the basis of a deduction of one-seventeenth each year beginning January 1, 1911, I should then increase the invested capital by one-half of $88,235, that is to say, by $44,117.50. The cents have been disregarded in Exhibit 145. The result of that increase would operate to the detriment of the Wrigley Company and to the benefit of Larson, on my theory of

computing the value of good will, speaking now only of the addition of the $44,117.50.

(Mr. Mayer then asked the witness if he added this item of Forty-four thousand odd dollars to the tangible capital on which he computed interest for 1911 in order to ascertain the good will value on his theory, whether
(3294) it would help or hurt Larson.)

(The witness said:)

3730 Mr. Mayer, we neither of us understand what the other one is talking about I am afraid. That is, I don't understand what you are talking about, and I may have answered in a way which is misleading in the circumstances. We first began to determine what the invest capital would be, assuming that I did not deduct the item of patents from the tangible invested capital in 1911. You then asked me what the effect would be if I adjusted the invested capital by the amortization charged in the year 1911. My reply to that I think was incorrect. If you are talking of the item of $3,598,787.24, which I stated would be the invested capital on the supposition that there had been no amortization of patents prior to 1911, my answer is that to assume that the patents were amortized in 1911 would require me to reduce that figure of $3,598,787.24 by $44,117.50. In other words, the net invested capital would then be $3,554,669.74, but if your question as to the effect of allowing the $44,117.50 applies to the figure of $2,098,787 shown on Exhibit 145, my answer is that it has no effect at all because, since I have not included patents as tangible capital on Exhibit 145, I do not have to consider the amortization of those patents for the purpose of determining invested capital.

3732 **Friday, March 31, 1922. 2:00 P. M.**

HERBERT C. FREEMAN, resumed the stand for further cross-examination by Mr. Mayer:

I made the calculations on sheet 6 of Exhibit 148 be-
(3294) cause when I made the statement on Sheet 5 of Larson Exhibit 148 of the percentage of advertising adjusted by T. N. & Co's Exhibit O to sales, it appeared to me that the figures were not entirely logical. I accordingly re-computed the figures for the last three periods,

namely, from January 1 to November 12, 1918, as shown on Exhibit O in order to develop the figures in Exhibit O as I would have personally stated them had I been
3733 using that theory. In other words, my object in preparing sheet 5 of Exhibit 148, which is now in evidence, was to see what per cent. the advertising as adjusted by Touche, Niven & Company as indicated on its Exhibit O bore to the Wrigley sales during the accounting period. The percentages shown on that sheet for the three periods of 1918 into which the Wrigley account is divided didn't seem logical to me. The percentage shown on that sheet of advertising as adjusted by Touche, Niven & Company's Exhibit O to sales for the period from January 1, 1918, to the 31st day of August, 1918, is shown as 5.73%. And the percent of advertising as adjusted by that Exhibit O to the sales of Wrigley for the period from September 1, 1918, to October 4, 1918, is shown on that sheet 5 as 8.65. That sheet also shows that the per cent. of advertising as adjusted by that Exhibit O as compared with the Wrigley sales from the 5th of October, 1918, to the 12th of November, 1918, is 10.74. Because
3734 those percentages did not seem logical to me, I made the sheet numbered 6 of that Exhibit 148. I prepared that sheet following the theory used by Touche, Niven in Exhibit O, but apportioning the figures for those three broken periods in a way which I thought was more expressive of the thought they had in mind.

When Touche Niven & Company prepared Exhibit O attached to their report filed as Larson Exhibit 132, their
(3296) theory was that an advertising expense should be charged as follows: One-half in the year in which it was incurred and to distribute the other fifty per cent. over a period of three years from the date when the expenses were incurred. In other words, to charge two-thirds of the advertising each to the year in which the expense was incurred, and one-sixth each to each of the two subsequent years. In other words, that would be right if some of the advertising extended three years.
3735 When I prepared sheet 6, I did not think that ratio of allocating advertising, namely, four-fifths or two-thirds, to the year in which it was expended, and one-sixth for each of the two following years was ont a proper method. I have already testified that I have not adopted the method set forth in Exhibit O. My purpose in making

this sheet 6 was to interpret the figures on Exhibit O in the way in which I would have interpreted them if I had been adopting that theory. It is simply a method of —an arithmetical method let me say, of distributing the figures for the last three broken periods. For those last three periods I distributed the advertising on sheeet 6 in exactly the same way as it was distributed in the other complete years on Exhibit O, but I distributed it in what I though was a more correct way in dealing with broken periods.

(Mr. Mayer offered in evidence the sheet marked Larson Exhibit 148, sheet 6. It was received in evidence and marked "Admitted.")

3736 (Larson Exhibit 148, sheet 6.)

(3297) I prepared sheet 7 of Larson Exhibit 148 for iden-
3737 tification in order to see what the effect would be if in preparing Exhibit O Touche Niven had not charged off any part of the fifty per cent. which they described as being deferred to the year in which the expenditures were incurred, but had spread that fifty per cent. over the succeeding three years. Sheet 7 is based upon a different method of distributing advertising from that shown on either Exhibit O or my working sheet 6 of Exhibit 148. It was an attempt on my part to follow what I thought was expressed in the heading of Exhibit 1 in which Touche Niven said that it was a statement showing apportionment of advertising expenses on the basis of deferring fifty per cent. thereof over a period of three years from date expenses were incurred. The method they used in Exhibit O was to treat the date the expenses were incurred as the beginning of the year in which they were incurred.

I merely prepared sheet 7 on the train coming to Chicago to see what the effect would be of treating the expenditures as incurred at the end of the year in which the
3738 the payments were made. Exhibit O, to my mind, was not clear on that point. In other words, sheet 7 distributes the advertising over a period of four years, while my sheet 6 and Exhibit O distribute advertising over a period of only three years. I did not make any calculations on the basis of spreading the advertising over a period of five or six years. The highest number of years over which I spread advertising in any of the calculations

that I have made was four years, as shown on Sheet Number 7.

I didn't make any calculations in which I spread the advertising over a period longer than four years, because I never adopted that theory as a theory of my own at all. I only spread it over a period of four years, as I
(3298) said before, to show what the effect would be of assuming the expense for advertising in a year as having been incurred at the end of the year intsead of assuming it was incurred at the beginning of the year as Touche Niven did in Exhibit O.

3739 (Mr. Mayer offered in evidence sheet theretofore marked for identification Larson Exhibit 148, sheet 7. It was received in evidence and marked "Admitted")

3739 Said exhibit shows the advertising expense from 1911
3740 to July 31, 1914 (both dates inclusive) aggregate $5,412,578.84, and from 1911 to 1918 (both dates inclusive) an aggregate of $15,844,599.47, and that by spreading the several amounts over a period of four years and charging one-half thereof in the year in which the expense was incurred and one-sixth in each of the three following years the amount deferred on July 31, 1914, was $1,736,907.95, and on December 31, 1918, the deferred amount was $2,444,838.74. The witness continued:

(3299) Sheet 8 of Larson Exhibit 148 contains some figures
3741 made by Mr. Whitworth when he and I worked together on this matter last Sunday night for the years 1914, 1915, 1916 and 1917, in which we attempted to agree to figures which Mr. Stanley testified to as representing the advertising expense for those years with the figures shown on the Touche Niven report.

(Mr. Mayer offered said sheet 8 in evidence. It was received in evidence and marked "Admitted."

3742 (Larson Exhibit 148, Sheet 8.)

3743 Sheet 9 of Larson Exhibit 148 is the sheet containing the rough preliminary figures from which Larson Exhibit No. 146 was prepared. Exhibit 145 purports to show my theory as to how to get at the value of the good will of the Wrigley Company at the beginning of the accounting period. I have already mentioned there is an arithmetical error in that statement, and that my figures are accordingly slightly changed. I have a revised statement which shows the correct figures.

(The said statement was produced by the witness. Mr.

Mayer asked that it be marked for purposes of identi-
(3300) fication as "Larson Exhibit 145-A". Mr. Aldrich
3744 offered said corrected statement in evidence. Mr. Mayer objected to its introduction on the ground that it was incompetent, irrelevant and immaterial. The objection was overruled, and the document was received in evi-
3745 dence marked Larson Exhibit 145-A.) Said exhibit shows annual sales from and including 1911 to November 12, 1918, and net profits as reported for each of said periods, and amortization of patents and interest on average net tangible capital, figured at both six and seven per cent per annum and a valuation of the good will of Wm. Wrigley Jr. Company on July 31, 1914 of $16,036,450.00 (based on allowing interest on an average net tangible capital at 6% per annum) and $15,656,830.00 (if such interest be figured at seven percent.)

(3301) If it were now July, 1914, and I was asked to ascer-
3746 tain the value of the good will of the Wm. Wrigley Jr. Company, and I had before me the same information with respect to its business and assets as I have seen, I would not have prepared my statement of valuation of the good will during that period, that is, from January 1911, to July 31, 1914, on precisely the same basis and used precisely the same computations as I have in fact used in Exhibit 145 as corrected by Exhibit 145-A. I don't think I should have used exactly the same figures, because at that time the Wrigley Company had not written off any amortization of its patents. That was only entered on the books in 1918 and it has been distributed back to each of the years of the company's existence, including the years prior to July 31, 1914, and the years during the accounting period.

3747 If I assume that this is July 31, 1914, and that I had before me all information regarding Wrighley's business from January 1, 1911, to July 31, 1914, as I have seen it, and on that date, July 31, 1914, the master had asked me for my opinion as to what the value was of the good will of the Wm. Wrigley Jr. Company on July 31, 1914, I would not from that information alone have used ten as a multiplier. I think I probably would have
(3302) used eight years. I might have used five years. In
3748 that situation I should not in any case have gone below five years.

When I prepared Larson Exhibit 140, I used as multi-

ples three and five and ten and fourteen, because that was a purely tentative schedule for the purpose of showing the result of making calculations on several different bases.

I will explain the corrections that Larson Exhibit 145-A makes with respect to Larson Exhibit 145. Line 10 in column D has been corrected by changing the average net tangible capital from $3,224,946 to $5,528,479. The previous figure represented 7/12ths of the latter figure. The amounts of interest stated in lines 11 and 12, column D, were correspondingly changed, the net figure representing interest for seven-twelfths of one year on the corrected figure of capital stated in line 10, column D. The amount of the excess average annual
3749 profits over the above interest stated in lines 13 and 14 in column D were changed to give effect to the correction made in lines 11 and 12 of the same column. The total interest on average net tangible capital and the average per annum of these items as they appear on lines 11 and 12 of columns E and F, respectively, were changed to correspond and the excess annual profits for the total period, and the average per annum as shown in line 13 and 14, columns E and F, respectively, were also changed to correspond. The values of the good will for this period shown on lines 15 and 16 of column F were also changed to correspond. The totals shown in column E on lines 7, 8, 9 and 10 were, I thought apt to be misleading, and I eliminated them in schedule 145-A. They served no purpose in the schedule, having been put in solely to prove the cross footing.

Exhibit 145-A also changes Exhibit 145 in other re-
(3303) spects. I will state them. As to the period falling within the accounting period, the item shown on line 5 in column K was changed by $5,034 to give effect to information which I obtained after the preparation of Exhibit 145 and the adjusted figure of profits shown on
3750 line 6, column K, was changes to correspond. The totals shown on lines 5 and 6, in column L, and the average per annum for lines 5 and 6 in column M, were likewise changed to correspond with the corrections in column K. That would be lines 5 and 6 in columns K, L and M. Following line 10, in column G, H, J and K, figures were introduced to correct the amount of average

net tangible capital employed during the years 1915, 1916, 1917, and the fractional part of 1918.

As to whether I changed line 10 under columns G, H, J and K of Exhibit 145, I will say I did not change the figures on that line, but I inserted two lines of figures underneath line 10, to give effect to my corrections. These corrections were the main purpose for the correction of the entire schedule, inasmuch as I found that I had understated the net tangible invested capital during the accounting period, and by doing so have overstated, inadvertently, the value of the good will at the close of the accounting period. As the result of this correction of the net tangible invested capital, the calculations of interest on average net tangible capital in lines 11 and 12, in columns G, H, J, K, L and M were correspondingly corrected and the excess average annual profits shown in lines 13 and 14, columns G, H, J, K, L
3751 and M, correspondingly corrected and the value of good will shown in lines 15 and 16, column M, were correspondingly corrected.

(3304) Also, in order to render the statement more complete, I added at the end of the schedule the item "Increase in value of good will at end of accounting period over value of beginning of the counting period on basis of interest allowance" at 6% per annum, $5,498,970; at 7% per annum, $5,003,960. Those are the corrections in the Exhibit.

As to whether, looking at Exhibit 145-A for the years 1915, 1916, 1917 and the various parts of 1918, I threw bask into invested capital the amount shown on Exhibit 145-A as having been added for excess amount of reserve provided for contingent liability on U. P. S. coupons, I will say that was for the purpose of the corrections made in preparing Exhibit 145-A, this correction being shown as "Addition to Surplus through reduction of contingent liability on U. P. S. coupons".

The amounts which I have thus added to surplus through reduction of contingent liability are not the same as those I have added for excess amount of reserve, because the amount added for the various amounts of reserve in each year represents the excess amount for that year while the addition to the surplus represents the average of the accumulated figure at the beginning and end of each year.

3752 Referring to Exhibit 145-A, I took the figures which I added for excess amount of reserve provided for contingent liability on U. P. S. coupons from the working sheets of Touche, Niven & Company. They are based on the difference between a sixty per cent. reserve and a thirty-three and one-third per cent. reserve. In taking the difference between the thirty-three and one-third per cent, and the sixty per cent. reserve, I took sixty per cent.
(3305) and thirty-three and one-third per cent. of the amount of coupons that were issued, after deducting in each case, the amount paid out for coupons redeemed. I did not take sixty per cent. of the amount that were unredeemed. I used the company's figures as to the sixty per cent. figure.
3753 I used Larson Exhibits 141, 142, 143, 144, 148 sheet 1, in preparing Exhibit 145-A. I also have here a sheet which formed the drafts of Exhibit 145 which was prepared from the Exhibits I have just mentioned. I also have my own copy of Exhibit 145 in which certain of the original figures are corrected in pencil, and two additional working sheets, which, together with my copy of Exhibit 145, formed the draft for Exhibit 145-A. The only working sheets that I used, made or relied on in preparing Exhibit 145-A, which are not already in evidence, are the three sheets which I have now before me, except that I also used sheet No. 674 of the Touche, Niven & Company working papers, which has also on it "Touche working paper No. 9 taken for identification. Touche Exhibit 19, January 30, 1921, E. A. E."

(Mr. Aldrich, at Mr. Mayer's request, conceded that sheet No. 674 is one of those which have heretofore been presented to the master and identified as part of Touche Niven's working sheets. The three working sheets pro-
3754 duced by the witness Freeman were marked for identification "Larson Exhibit 149, sheets 1, 2 and 3, respectively".)

As to whether I have seen the balance sheets of Wm. Wrigley Jr. Company for each of the years 1911 to 1917, both inclusive, I will say I personally have not examined the balance sheets for 1914 to 1917, inclusive. As to
(3306) whether my associates who assisted me in making up those different tables that I have offered in evidence here did examine them, and whether I went over the results of their examination with them, I will say yes, to

a certain extent. The figures, however, which were used in preparing Exhibit 145 as to net tangible capital are the same as those which were used in Exhibit 140, and I have already testified as to the manner in which those figures were made up. They did not depend specifically upon balance sheets, but, as I then explained that, by taking the capital stock and the surplus less the intangible assets, and then treating the balance as representing the tangible assets of Wm. Wrigley Jr. Company at those dates, the effect is substantially the same.

3755 There are some minor differences, however, which can be ignored, and to the extent to which they have any effect they are detrimental to Mr. Larson and not to Wrigley.

In determining what the tangible capital was up to July 31, 1914, I used exactly the same type of items as I did in ascertaining the tangible capital in the business during the accounting period, with the exception that in the period prior to July 31, 1914, I did not treat the item of patents as tangible capital, while during the accounting period I did treat the item of patents as tangible capital. That is the only difference.

3756 In ascertaining the tangible capital used in the business up to July, 1914, I made some reductions of a different character from the deductions which I made from capital used during the accounting period. Those differences were that during the period prior to July 31, 1914, I deducted from the capital the item of patents, that is to say, I deducted not merely $6,000,000, which (3307) was later segregated as representing the item of good will, but I deducted the total amount of $7,500,000, which was lated divided into $6,000.00 good and will and $1,500,000 patents. During the accounting period I deducted only $6,000,000, and not $7,500,000. That is the only difference in the type of items which I deducted in the two periods. I am referring now to all the statements I have produced here. I am speaking as to the net tangible capital during these two periods.

3757 (Mr. Aldrich offered in evidence Larson Exhibit 146, consisting of two sheets, each entitled "Memorandum of net Tangible Capital." They were received in evidence, and the objection which Mr. Mayer had reserved thereto was overruled, and said sheets were marked "Admitted".)

3760 What I mean is that the only difference in the way I have treated the accounts as shown on the books in arriving at the net tangible capital in the prior period and in the accounting period, is this item of $1,500,000 for patents.

In testifying as to the manner in which line 1 of Exhibit 140 was arrived at, I was asked to show what items of assets and liabilities had entered into the computation of net tangible property which we used in computing the value of the good will. For that reason I took the capital and surplus shown, as I understood them to be, by Wrigley Company's balance sheet at December 31, 1913, December 31, 1914, 1915, 1916 and 1917, at the pages of the record indicated on the Exhibit, and reconciled those figures with the net tangible capital as shown in line 1 of Exhibit 140.

(3308) There is nothing in Exhibit 146 which corrects anything in either Exhibit 140 or Exhibit 145. There is a memorandum at the foot of the Exhibit calling attention to the fact that there is a difference at each period of $239,262.62. If this item is an error, as to which I am
3761 not satisfied, its effect is detrimental to Mr. Larson and not to Mr. Wrigley. I accordingly did not attempt to make any corrections or even to investigate, to see whether one was necessary in order not to cloud the record.

(The witness then produced some more working sheets which he had and which had not yet been identified before the matter.)

The testimony that, in my judgment, fifty per cent. or more of the advertising is institutional, did not mean that I had in mind and include samples of Doublemint chewing gum that were given away to further the sales of Doublemint during the accounting period. I had in mind or included the expense of men who went out for the purpose of making Doublemint chewing gum known and advertising it in that way, known as detail men. In other words I assumed that those men were out to sell all kinds of Wrigley's chewing gum, including Wrigley's
3762 Doublemint. I would not change my conclusions if, as a matter of fact, those men were out for the purpose of exploiting Wrigley's Doublemint gum, and not for the purpose of selling other kinds of gum.

I assumed in my statement that fifty per cent. or more

of the Wrighley advertising was institutional, that the matter that was distributed by Wrigley for show purposes, such as window displays, was institutional. That is based upon the photographs which I saw of the window displays in the volumes shown to me at the offices of the Wrigley Company.

(3309) Looking at the sample of the dummy carton of Wrigley's Juicy Fruit chewing gum, shown me, I will say that the expense of that kind of a dummy should not be

3763 allocated by treating half thereof as of deferred value. As to how I would allocate the expense of that kind of an advertisement would depend upon the way in which the advertisement was used. If the advertisement is intended to be used alone for the purpose of pushing the sales of Juicy Fruit as against the other brands of the Wrigley Company, I should say that it would be chargeable probably to the extent of two-thirds to Juicy Fruit and one-third to institutional advertising, but if used in conjunction with similar dummies representing the other brands used by the Wrigley Company, then, in my opinion, the cost of such dummies should be treated to the extent of fifty per cent. as being institutional, each brand being held to help the institution as a whole.

3764 If I suppose the Wrigley Company was making fifteen different brands of gum during the accounting period, and if I further suppose that there were no dummy cartons displayed with the one before me that had any reference to twelve brands, then as to how I would allocate the expense of the dummy carton now before me, would be dependent whether the three brands that were represented represented the bulk of the business of the Wrigley Company. If that were the case and the other twelve brands were of minor importance, I should say that the accumulated effect of the three brands advertised together was very largely institutional, and that at least fifty per cent. of the advertising was of an institutional character. As a matter of fact, I would not want to express any opinion in this case as to how any of the advertising should be allocated excepting so much thereof as was pictured in the seven volumes.

(The said dummy package was marked for identification "Larson Exhibit 150".)

3765 I did not examine the report made by Marwick, Mitchell, Peat & Company, addressed to Master in Chancery

Morrison, dated June 17, 1920. Nobody has discussed that report with me. There has been no discussion by anybody with me with respect to any report made by that concern. I have heard before now that that concern made a report. I heard it from Mr. Whitworth and Mr. Vincent. They did not tell me what the report says as to these different topics involved in the accounting now on hearing. The only thing I know about the report is Mr. Vincent read me a paragraph from it with regard
3766 to the question of the reserve on the U. P. S. coupons. I also know that the balance of surplus shown in that report, or rather I believe that I know that the balance of surplus shown in that report is the same as the balance of surplus at the end of the period used by Touche, Niven & Company. I know that by word of mouth from Mr. Vincent. I have never read the report; I have never had it in my hand; and I have never discussed it with anybody except to the extent that I have said. I also understood that when Touche, Niven & Company were first engaged to make this examination, at which time, of course, I was a partner of the firm and was acquainted with the business, I understood that we were engaged because some question had been raised as to the acceptability of this report, but in what particulars or in any detail I have absolutely no information.

I have had personal experience with the issuance or the redemption of trading stamps, but not with United
(3111) Profit Sharing coupons,

3767-69 (Mr. Mayer then asked the witness what was the concern that issued trading stamps as to which he had knowledge. Mr. Aldrich objected, and the objection was sustained.)

3770 I have not had experience with coupons similar to the U. P. S. coupons. As an accountant, I will say in order to ascertain the profits of a business during a given year it is necessary in case of a manufacturing or wholesale or retail business to take an inventory. As an accounting rule, which has been observed for I should say, half a century, inventories are valued at cost or at market value if market value is lower than cost. If I were a member of a firm and were going to sell out my interest, a competent accountant would not advise taking in the
3771 inventory the actual market value of the merchandise, not where the business was a manufacturing or a whole-

sale or retail business. There are some specific classes of businesses, such as wholesale metal dealers, and to some extent flour mills, in which an inventory is in effect taken at a certain relation to market value because of the face that there are always outstanding very large commitments against the inventory for delivery, but speaking generally in the absence of any instructions to deviate from the accepted principles of valuing an inventory at cost or market if market were lower than cost.

I would say that even though I were the partner that was selling out. It is not my understanding or experience that speaking generally, prior to 1913 when the income tax law became effective it was customary for merchants
(3312) generally to make annual inventories in which they sought to value their stock on hand on a basis of the then current market.

3772 The National Suit & Cloak Company carry an item for good will. It is the value at which the good will was capitalized at the formation of the business as measured by the par value of the stock issue for all of the assets collectively, tangible and intangible.

I could not say as to whether that was an arbitrary valuation. I was not connected with the Company at its formation. The valuation of the good will has not been changed from time to time. That valuation bears some relation to the actual value of the good will of the business, in the sense that the amount of the good will happens to be the par value of the common stock issue.

We have been retaining that on our books as the value of the good will regardless of the fluctuations of the value of our stock.

3773 I have never made a computation to see if we applied to our business, the National Cloak & Suit Company, the formula that I have pronounced here before the master as the correct one for ascertaining the value of the good will that we carry on our books for good will. I know you would not if you took the last two years into account.

If I applied the formula that I have applied to the Wrigley Company to the National Cloak & Suit Company, that is, take a four year period of average profits and then deduct the average interest on the average tangible capital during those years and then multiply the balance by ten, I think if you excluded the last two years, it would probably work out rather more than Twelve mil-

lion Dollars. I am pretty sure it would be in excess of
(3313) twelve million dollars if I excluded the last two years and took our average profits for four or five years back.
3774 In my opinion the usual rule is to take the average profits for preferably five years. I should say it would be unfair if a person were to ascertain the good will of the National Cloak & Suit Company on the same basis that I have told the master should be applied to the Wrigley Company, if that involved the last two years. That is because the National Cloak & Suit Company the last two years were very badly effected by the extraordinary conditions.

If I had made the valuation of the good will of the National Cloak & Suit Company two years ago under the
3775 same formula that I have applied to the Wrigley Company, the results would have been fair. If I used the formula today, the results would be unfair.

The general idea of putting a value on good will means that it is assumed there will be a continuation in the future of the general average of profits of the past. So, if two years ago I had valued the good will of my company using the same formula that I have applied to the Wrigley Company, I would have assumed that the profits for 1920 and 1921 would continue substantially along the lines of what they were in the few preceding years, except as to any extraordinary conditions which might arise. Two years ago I would not have anticipated the conditions that arise in fact in 1920 and 1921. If anyone would have bought in 1920 into our business on a basis of good will, valued as I then valued it, they would have been very much disappointed. They would if they did not
3776 take a long enough view of the situation.

The real theory about getting at the value of good will is the expectation that the concern will continue to earn
(3314) in the future—in the Wrigley case for a period of ten years—substantially what it earned during the two preceding years.

I testified on direct examination when I produced Exhibit 140 that in my opinion the proper formula for determining good will is to take the average profits for a given number of years, preferably five years, and to deduct from the average so obtained interest on the average tangible capital used during that period of years.

I did not represent in Exhibit 140 that the interest should be computed at seven, eight, nine or ten per cent. That was a tentative Exhibit prepared before I had all the history of the Wrigley Company.

3777 After finding the average profits for preferably five years, and deducting from those average profits interest on the average tangible capital during those five years, I said that the balance should be multiplied by some multiple spoken of as the number of years of purchase. If that rule is applied to the business of the National Cloak & Suit Company, and the average of its profits for the last five years is taken, and there is deducted therefrom the interest on the average tangible capital during those five years and the balance multiplied by

3778 ten, I should say the result would not be a fair valuation of its good will. It would result in valuing the good will too small.

I don't believe I could even guess as to the extent that such a computation would make the good will of the

3779 National Cloak & Suit Company too small. If I applied the formula which I have applied to the Wrigley Company to the National Cloak & Suit Company's business in 1916, 1917, 1918 and 1919, I think a reasonably fair valuation of its good will would result.

(3315) Saturday, April 1, 1922. 10:30 A. M.

3781 HERBERT C. FREEMAN resumed the stand for redirect examination by Mr. Aldrich:

When I said in answer to a question of Mr. Mayer's that I did not assume that the injunction ordered by the Court affected the Wrigley Company's business, I simply meant that the Wrigley Company was continuing the sale of all the brands after the accounting period that it had been selling during the accounting period as far as any effect of the injunction was concerned.

3782 I understood the effect of the injunction was to require the Wrigley Company to change the dress of the Doublemint package.

(Mr. Lane then moved to strike the answer as secondary evidence and a conclusion of the witness. The mo-

tion was denied by the master. Mr. Aldrich then put the following question to the witness:

"Q. In Larson Exhibit 140 which I have understood you to describe as a tentative valuation on different bases of the good will of the Wrigley Company at the end of the accounting period, applying the formula which you have given in court and in Exhibit 145-A, as you afterwards corrected Exhibit 145, there is a difference in the terms, the years of purchase, and also in the rates of interest, and you have been asked by opposing counsel
3783 if you could imagine yourself back to the 31st day of July, 1914, and charged by the master with the duty of ascertaining, pursuant to your formula, the good will of the Wrigley Company as of that date, what years of purchase you would have used and also what rates of interest, as I recall the questions, would have applied, and you have made certain answers thereto. I will ask you to
(3316) state to the master your reasons, or what additional knowledge, if any, you had when you prepared Exhibit 145-A which enabled you to speak with greater certainty as to the years of purchase and the rates of interest that should be applied to the valuation of the good will of the Wrigley Company at the end of 1918." Counsel for the Wrigley Company objected on the ground that Mr. Aldrich had not stated correctly the witness's testimony and also on the ground that the question was in improper form. The objection was overruled.) The witness continued:

3784 When I prepared Exhibit 140 it was on a tentative basis for the reason that the only information before me at that time was the business during the accounting period which covered three complete years and parts of two other years. In my opinion it would not be proper to predicate a value of good will for a business solely upon such information, and for that reason Exhibit 140 was made to show various alternative bases which might, in the light of additional information, one or more of which might, in the light of additional information, be found to be proper. When I prepared Exhibit 145 and corrected Exhibit 145-A, I had before me, not only the figures for the business during the accounting period,
(3317) but also the business back to and including the year 1911 which gave a series of seven years and over ten months, and upon the stability of the business as shown

by the results for this series of years it appeared to me to be proper to adopt the basis which I did adopt in preparing Exhibits 145 and 145-A.

The question which I was asked by Mr. Mayer, as to what my opinion would have been at July 31, 1914, was predicated upon the theory that at that time I should have known nothing further than the results of the busi-
3785 ness for the years 1911, 1912, 1913 and the seven months of 1914, and my answer necessarily was that upon the statement of facts I should not have felt justified in valuing the good will at July 31, 1914, on the basis which I adopted in Exhibit 145-A. From the period from Jan. 1, 1911 to the end of the accounting period, I found as to the sales there was a constantly increasing amount except that the year 1914 fell somewhat below the year 1913, the figures being $8,973,137.89 for the year 1913 and $8,008,-536.07 for the year 1914, increasing again to $9,717,145.33 in 1915.

As to profits, the condition is that the year 1913 was in excess of the years 1914 and 1915, but the general trend was in the direction of an increase, and the average profits for the period from 1915 to November 12, 1918, were in excess of the average profits for the period from 1911 to July 31, 1914.

3786 As to percentage of profits to sales I find that there was not an increase in the percentage. The percentage of net profits in the years 1911, 1912, 1913 and seven months of 1914 was in excess of the percentage in the years 1915, 1916, 1917 and the portion of 1918. Expressed in the form of an average for the periods, I find that the average for the period from January 1, 1911, to July 31, 1914, was approximately 24.6% after giving effect to the
(3318) adjustment for amortization of patents shown on Exhibit 145-A, and that the percentage for the period from January 1, 1915, to November 12, 1918, was slightly less than 20%.

3787 In arriving at my percentage of about 20%, I did not include the period from July 28, 1914, or any time thereafter up to January 1, 1915. I was using the figures shown on Exhibit 145-A.

With respect to the extraordinary conditions I took into consideration, I will say I have, of course, no information as to any extraordinary condition in the period prior to July 31, 1914, but as to the accounting period I

took into consideration the fact that the profits during this period have been charged with very heavy amounts for income and excess profits taxes which I regard as an extraordinary condition affecting that period. I also understand that the price at which the products were sold to the jobber during those years was increased over the former price, and I took that into consideration.

3788 It is correct to say that in computing the percentage of profits to sales during the accounting period, I deducted all the income and excess profits taxes that have been paid or charged in the account before making such a computation. I treated the item of patents as related to tangible assets in a different manner in the valuation of good will at the beginning of the accounting period from the treatment accorded the valuation of good will during the accounting period, because my opinion was that the question as to whether patents were or were not tangible assets was to some extent a matter of controversy. If they had been included as tangible assets throughout the period prior to July 31, 1914, as they were throughout the period from January 1, 1915, to November 11, 1918, the effect would have been detrimental to Mr. Wrigley (3319) and to the advantage of Mr. Larson. In order, there-
3789 fore, to limit the possible controversy as to the nature of this item of assets, I concluded that it was preferable to exclude it from the tangible assets in the period prior to July 31, 1914, and thus increase the value of good will to July 31, 1914, to the advantage of Mr. Wrigley and to the detriment of Mr. Larson.

It is not the practice of companies in stating profits for a fiscal period to re-value any of their assets, for example, if there has been an enhancement in the value of real estate owned by the company, they do not at the end of each fiscal year re-valued the property purchased. It is not customary to re-value fixed assets. The only assets which are re-valued in ordinary methods of accounting are what are known as the current assets consisting of merchandise, accounts receivable and items of that kind.

That is true, even though the business of the company itself has increased the value of assets acquired at an
3790 earlier period. For example, if a railroad company acquires real estate in a new territory and extends its line into that territory, the effect is generally to enhance the value of the real estate owned by the railroad company,

but it is not customary to re-value that asset in determining the profits of the railroad company. In the question of a private real estate corporation developing a new tract of territory where after the sale of a portion of the lots the value of the remaining lots is increased it is not customary to re-value the remaining lots in the accounts of the real estate company for the purpose of determining the profits of the company for ordinary purposes.

May I add to that answer that my answer applies, of course, to the determination of the profits of a company
(3320) at the close of an ordinary fiscal period for the purpose of stating its accounts to stockholders and to its banks and creditors.

3791 I consulted with Mr. Whitworth with reference to this account on February 11, on my return from Kansas City. I had entirely forgotten this when I first testified, but afterwards remembered it. That was the occasion when I met Mr. Aldrich for the first time. I will explain why I added back to the profits the excess of the reserve for the contingent liability on U. P. S. coupons over the 33-1/3% basis established by the Touche-Niven report. When Exhibit 140 was prepared I had no figures or information as to the business of the Wrigley Company
3792 prior to July 31, 1914, and I had assumed that the 60% used for determining reserve against U. P. S. coupons would affect the prior period just as it affected the accounting period. I found, however, that I was mistaken as to this and that the U. P. S. coupons had not as a matter of fact been issued during the prior period. If they had been issued during the prior period, then the difference between the 33-1/3% and the 60% reserve would have been maintained throughout and would not be a matter of so much importance in comparing the prior period with the accounting period, but in view of the fact that this item did not affect in any way the profits for the period prior to July 31, 1914, I considered it to be necessary in preparing Exhibit 145 to add back to the profits the excess over what in my opinion is a proper reserve for this item. In Exhibit 145-A I added back this excess reserve to the net tangible assets as I have already explained in my previous testimony.

(3321) (Mr. Aldrich then offered in evidence a statement
3793 which he said showed in concrete form the proofs of the witness' valuation of good will as applied to profits as

shown by the Touche-Niven report. A discussion then
3795 took place. At the conclusion of the discussion, Mr. Mayer objected to the introduction of the document in evidence, on the ground that it was incompetent, irrelevant and immaterial, and that he proceeded upon a theory that was not supported by law or germaine to the case. The objection was overruled. Mr. Aldrich offered the document in evidence. It was received in evidence and marked Larson Exhibit 151, Sheets 1 and 2.)
3796-7 (Larson Exhibit #151, Sheets 1 and 2.)
3798 As to whether in the expression of my opinion that 50% at least of the Wrigley advertising was institutional in character I was attempting to state my conclusion as to the average of all the advertising which I saw, I will say I was not attempting to make or form any mental idea as to the weighted average of all the advertising because I naturally did not know the amount that had been spent on each item of advertising shown in the seven volumes that were displayed to me. My opinion is that except as to certain of the advertising which I understood from notations in the seven volumes of advertising was put out in the year 1915 the cost of each and every one of the forms of advertising was institutional to the extent of at least 50%, so that of necessity in the aggregate at least 50% of the advertising was institutional. That is qualified, of course, with respect
(3322) to the year 1915 in which some of the advertisements taken alone were not in my opinion institutional to the extent of 50%, but as to the proportion which these formed of the expenditures for advertising in that year I have of course no information.

3799 *Recross-Examination by Mr. Mayer.*

I made no effort to analyze any of the advertisements and to ascertain their cost and to make any calculations thereon as to how much in dollars and cents should be charged to institutional advertising. But if in my opinion, as I have just stated it, the cost of each and every one of the advertisements should be treated at least to the extent of 50% as institutional, it follows that the total expenditure is institutional to at least the ex-
3800 tent of 50%. My qualification with regard to the year 1915, of course, still holds good.

I am expressing no opinion as to what part, if any, of the 1915 advertisements in the seven volumes should be charged to institutional advertising. I will say that the advertisements between July 28, 1914, and January 1, 1915, should be allocated by taking 50% or more thereof and charging them to institutional advertising, with the explanation that I am, of course, basing my opinion on the advertisements in the seven volumes from which the notations appear to have been put out in that period of 1914.

In my opinion 50% or more of the 1914 advertisements should be charged to institutional advertising. I base my conclusion in making that statement that 50% or more should be charged to institutional advertising entirely on the fact that the size and conspicuousness of the word
3801 "Wrigley's" is such as to justify such a charge. I am
(3323) of the opinion that the question whether or not it was customary to re-value fixed assets annually in ascertaining profits has a bearing on the case now before the master. I will explain.

In cross-examination yesterday, Mr. Mayer asked me questions tending to bring out my experience with regard to the treatment of good will, the balance of good will in the balance sheets of corporations in determining their profits, particularly as to whether or not the fluctuations in the value of good will were brought into accounting in determining the profits of corporations.

My opinion is, as I then stated, that no such fluctua-
3802 tions are brought into account, but it is equally true that no other fluctuations in the value of capital assets are brought into account for ordinary purposes in determining the profits of corporations except, of course, the ordinary and necessary reserve for depreciation on wasting assets.

I testified in answer to a question put to me this morning by Mr. Aldrich that in determining annual profits it is customary to re-value what I would designate as current assets, such as merchandise and machinery and fixtures. As to why the merchandise is re-valued in order to ascertain the annual profits, I will say it is revalued in order to determine if there has been any reduction in the market value of such merchandise. It is not re-valued in the sense of increasing it above cost if
3803 the market value has risen, so that when I speak of the

revaluation of merchandise I mean that an inventory is taken and the merchandise is valued at cost or at market if the market is lower than cost.

(3324) It is not a fact that good modern accountancy justifies revaluing fixed assets in determining annual profits.

As to whether Armour & Company revalued their fixed assets within the last twelve months for the purpose of ascertaining their annual profits, I will say I believe from what I have seen in published reports that Armour & Company did revalue their assets, but that revaluation, if I am not mistaken, was for the purpose of redetermining their surplus and not their profits for the year. If it was, as a matter of fact, used in determining their profits for the year, I should say that it was to meet an extraordinary condition which is probably beyond the experience of any of us now living.

I don't know that Sears, Roebuck & Company increased the value of their real estate also in determining their annual profits recently. What Sears, Roebuck did was to sell their real estate at a value in excess of its book value

3804 and to carry the excess into their surplus. That is not just exactly the same as though they had increased the value of their real estate. They had actually sold their real estate. I know that the term of that sale reserved to Sears, Roebuck & Company the option to repurchase, but no obligation to repurchase. The option to repurchase and putting on their books the purchase price is not the equivalent of increasing the value of their fixed assets, in my opinion.

I did not mean to intimate in any of my testimony on this subject, that is, with regard to the revaluation of assets that the Wrigley Company made any revaluation of any of their assets in the determination of their profits as reported by them, which revaluation I am objecting to.

(3325) I had no communications with Mr. Aldrich prior to a conversation with Mr. Whitworth on February 11th at which I met him, nor with any of the counsel representing Larson in this case, nor with anybody interested on Larson's side of the case.

3805 All I meant to do by my answers to Mr. Aldrich's questions this morning as to my talk with Mr. Whitworth was to inject into this record a reference to a conversation not heretofore referred to by me.

When I gave as the reason for treating patents differ-

ently prior to July, 1914, from what I did during the accounting period that my opinion as to whether patents were tangible was a matter of controversy, I did not mean that I believed they were a matter of controversy in this case. What I meant was that I was not sure whether
3806 legally patents are regarded as tangible or intangible capital and further in the first excess profits tax law patents were treated as tangible capital.

The first federal tax law on the subject made patents tangible, and the act of 1918 made them intangible.

The only discussion I had with Mr. Whitworth or any of my former associates as to whether patents were tangible or not was in the preparation of Exhibit 145.

I have had some correspondence with Mr. Whitworth, or with Touche Niven & Company, sometime in 1920 with regard to some of these matters that are referred to in the Touche Niven & Company report, Larson Exhibit 132. I was then a member of the firm in New York and I had correspondence with Mr. Whitworth in Chicago pertaining to the matters referred to in Larson Exhibit 132.

3808 I did not mean to say by any answer I have given that in my opinion the diminished ratio of profits to sales
(3326) during the accounting period was occasioned by the increase of the price at which gum was sold during the accounting period. I took into consideration in connection with the question of the Wrigley Company raising their price at which they sold the gum to jobbers during the accounting period as to what, if any, cost of material there was, and what, if any, cost of labor and in manufacturing and in selling expenses and in overhead and administration expenses there were during the accounting period.

3809 I did not make any computation as to what, if any, difference there was in the amount of profits made by the Wrigley Company on the sale of each box of gum during the accounting period, as compared to the amount of profit made on each box of gum sold in 1911, 1912, 1913 and the first seven months of 1918.

In fixing the value of the good will, which I have sworn to here, I did not assume that the income and excess profits collected by the United States Government during the accounting period would continue or would be discon-
3810 tinued immediately following the accounting period. In

making my computation of percent of profits to sales during the accounting period which I said was a trifle less than 20%, I excluded the period of time from July 28, 1914, to January 1, 1915, because I was stating that percentage only with reference to the periods shown on Exhibit 145-A. That elimination was not in favor of Larson and against Wrigley.

It is not a fact that when I computed the percentage of profits to sales and gave the percentages as being 24.6% during the period prior to the accounting and as a little less than 20% in 1915, 1916, 1917 and up to November 12, 1918, excluding the first five months of the accounting period it operated to the disadvantage of the Wrigley Company.

(3327) In fixing the value of good will, I did not take into
3811 consideration the fact that the Wrigley Company was enjoined from using a certain dress or style of package.

Redirect Examination by Mr. Aldrich.

My understanding is that no inventory was taken at the end of their first period by the Wrigley Company, be-
3812 fore they commenced the infringement July 28, 1914. My understanding is that the profits of the Wrigley Company for the last period of 1914 were arrived at on the basis of an agreed cost of manufacture, but I have not gone into that in any great detail.

Recross Examination by Mr. Mayer.

Mr. Vincent is here now, and he has been here during the whole hearing. He is apparently rendering some assistance to Mr. Aldrich in this matter right now, and he is here at my request.

(3328) Tuesday April 4, 1922. 10:30 A. M.

3813 JAMES ANGUS STEVEN, a witness produced on behalf of the L. P. Larson Jr. Company, having been first duly sworn, testified on direct examination by Mr. Aldrich:

My name is James Angus Steven. I live in Wilmette, Illinois. I have resided in Chicago fifteen years. I am a

certified public accountant. I served an apprenticeship of five years with a firm of chartered accountants in Glas-
3814 gow, Scotland. I continued to practice accountancy in Scotland eight years after I obtained my certificate and became a member of the Institute of Accountants and Actuaries in Glasgow. I came to America in 1906, and first went into the practice of my profession in this country in Atlanta, Georgia, with the firm of Alonzo Richardson & Company, public accountants. I was with them six months, and then came to Chicago and was employed by Price, Waterhouse & Company, with whom I remained eleven years. During the last four or five years of my connection with Price, Waterhouse & Company, I was the senior manager of the Chicago office. I was with
3815 Price, Waterhouse & Company up to the end of July, 1918, when I went with Winslow Bros. Company in Chicago, who were in 1918 making munitions for the American Government. I remained with Winslow Bros. Company as controller two years, to the time of the settlement of the Government contracts. I made up all our claims and had charge of all the accounting work in connection with their settlements with the Government, and together with the officers we negotiated the settlement with the ordinance deparment in Washington.

After that I commenced practicing on my own ac-
(3329) count. My office was in the Tribune Building. I have been engaged in accounting work for 28 years.

3816 I have named all the firms with whom I have been connected.

I am 46 years old. I became an apprentice at the age of 17. I have had occasion to examine Larson Exhibit 132, being the report of Touche, Niven & Company in
3817 this case. I have had no occasion to go into the original sources of the figures upon which that report is based. I have confined myself to the examination of the report and to the accounting principles referred to therein.

I concur in the statement of the accountancy principles embodied in the report of Touche, Niven & Company and the results reached. From the information I have gathered from the report and the manner in which the figures were compiled, I am quite in accordance with the accounting principles enunciated by Touche, Niven & Company.

I have had occasion to consider and investigate this question of the valuation of good will. I have had such an experience prior to my employment in the present case. In one case it was submitted to the courts for deci-
3818 sion. That was the Bettendorff litigation in Davenport, Iowa. I was sent by Price, Waterhouse & Company with whom I was connected when I worked on that case.

I made an investigation of the question of good will of the Wrigley Company as between January 1, 1911, and the period prior to the accounting period and the increase, if any, in the value of the good will during the accounting period. I understand that the accounting period in this case extends from July 28, 1914, to Novem-
(3330) ber 12, 1918. I have embodied that study or investigation in the form of a report. I have compiled a memorandum explanatory of the figures and computations that
3819 I have arrived at. The memorandum report is, I believe, a true, accurate and just report of my conclusions as an expert. I fully believe that it is a just and equitable statement of the values arrived at compiled on the basis of the figures which I had at my disposal.

My figures are based mainly on the balance sheets submitted by Wm. Wrigley Jr. Company in evidence here and any adjustments of those figures have been taken from the Touche, Niven & Company report or working papers.

3820 (Mr. Aldrich then offered in evidence the said report prepared by Angus Steven & Company. Mr. Mayer objected to it on the ground that it was incompetent, irrelevant and immaterial, and contained matters having nothing to do with accountancy principles, that it contained secondary evidence, and that the doctrine of good will for which Mr. Aldrich was contending had nothing to do with any matter that had been referred to the master.

The master stated that he would admit the document in evidence subject to the objection, and that if later on Mr. Mayer wanted to call attention to any specific portions, he would hear objections thereto. The master stated he had not examined it and that he assumed that neither had Mr. Mayer sufficiently to point out specific objections. Mr. Mayer stated he had not had time to read over the first ten lines since it had been handed to him.

(3331) Said document so offered in evidence by Mr. Aldrich
3821 was received in evidence subject to Mr. Mayer's objection, and marked Larson Exhibit 152. Said exhibit is entitled:

"Memorandum by J. Angus Steven, Chartered Accountant, Chicago, Regarding the Bases of the Valuations of Goodwill and Other Intangible Assets of The Wm. Wrigley Jr. Co.—(1) At Beginning of the Accounting Period and (2) At End of the Accounting Period.

Said exhibit says that the tangible and intangible assets must be considered collectively in any estimate of the value of the business, and that "this principle was recognized and given effect to at the incorporation of the Company as of January 1, 1911, as shown by the Company's Balance Sheet of that date, wherein the intangible assets are stated in the amount of $7,500,000.00, that being the value of the Common Stock issued therefor as of that date." Said exhibit further says that the value of the intangible assets "is necessarily governed by certain important factors, such as the stability of the enterprise, the character of the business, or risk involved, the trend of the business, i. e., whether it is showing a healthy growth, or is receding, and the probability of the earnings being maintained under a new management or change in personnel." Said exhibit further says that "having regard to the previously mentioned factors on which the capitalization assigned to the intangible assets would be dependent, it might safely be stated that a reasonable commercial return on the money invested in the net tangible assets would be 8%." Said exhibit also says that the "average investment in tangible assets representing the common stockholders' equity therein" was $2,299,320.94 during the three years and seven months immediately preceding July 28, 1914, and that
(3332) during the same period the average annual profits available for the common stockholders was $1,741,342.41, and that during the three years, 10½ months immediately preceding November 12, 1918, said average investment in tangible assets was $6,025,294.98 and said average annual profits available for the common stockholders was $2,582,482.37. Said exhibit further finds that the value of the Wm. Wrigley Jr. Company's good will and other intangible assets, based on "a reasonable commercial return of 8% on the investment in net tangible assets"

(and multiplying the average annual profits after deducting such 8% interest, by 3½) was $13,237,872.29 on July 28, 1914, and that if such excess profits be multiplied by 10, said good will value on said date was $15,573,967.40. Said statement further says that the increase in value of good will at the end of the accounting period over such value at the beginning of the accounting period should be apportioned between Doublemint and the other brands of gum, "in the ratio which the advertising expenses borne by each brand, for the period, bears to the total advertising expenses for the period. This statement is predicated on the assumption that the increased valuation is mainly, if not altogether, attributable to the character and extent of the adverising and publicity campaigns carried out by the company during that period and the results obtained therefrom."

The witness continued: I have a copy of the public
3822 announcement that I received from a broker friend of mine, as being the prospectus issued at the time 20,000 shares of the Wm. Wrigley common stock were sold to the public in 1919.

(Mr. Aldrich offered the document in evidence, and it
3825 was admitted in evidence as Larson Exhibit 153, subject to objection made by Mr. Mayer that it was incompetent,
(3333) irrelevant and immaterial, and that it had no bearing upon any matters referred to the master, and that it purported to be a document that was issued after the accounting period and not by the Wm. Wrigley Jr. Company, Mr. Mayer at the same time stating that he made no objection on the ground that it was secondary evidence.)

Said exhibit says that the preferred stock of the Wm. Wrigley, Jr. Company is $1,500,000. authorized and outstanding and that the authorized common stock is $15,000,000., of which 420,000 shares, having a par value of $25.00 each, or an aggregate of $10,500,000., are outstanding. Said exhibit further contains a "copy of letter from the president" dated September 2, 1919 addressed to F. B. Hitchcock & Co. and purporting to be signed by Wm. Wrigley Jr., President. Said letter says that "the business of Wm. Wrigley Jr. Co. was founded in 1891 with a capital of $5,000.00 and was successful from the start"; that the business up to the present time is the outgrowth of the original investment of $5,000.00,

the proceeds from the sale to you of 20,000 shares of common stock being the only outside capital ever introduced into the business; "that the Wm. Wrigley Jr. Company is today the largest manufacturer of chewing gum in the world, owning factories in Chicago and Brooklyn with a combined daily capacity of over 250,000 boxes (25 million sticks). Over $20,000,000.00 has been expended by the company and its predecessors for advertising, resulting in a world-wide distribution of its product. The company * * * owns and has developed special machines and labor saving devices which greatly simplify and lessen its cost of production."

3826 Wednesday, April 5, 1922. 10:30 A. M.

The witness continued: I am a member of the American Institute of Accountants, and a certified public accountant of Illinois.

(3334) *Cross-Examination by Mr. Mayer.*

3834 The only commercial business I have been in was when I was with Winslow Bros. Company. I have audited the accounts of many commercial concerns. I do not consider myself an expert on advertising, but I consider myself qualified to pass on the effect that advertising would have and has had on a business.

As to whether I have made any special study of the effect of Wrigley Company's advertising on any part of its business, I will say yes. I do not know what would be
3835 a normal amount for the Wrigley Company to spend for advertising in order to maintain a normal amount of business; except insofar as they are stated in the Touche, Niven & Company account, I do not know what the sales have been by years of the different brands handled by the Wrigley Company. As far as I recall, there is nothing in the Touche, Niven & Company account which shows how much was spent for advertising any Zeno brand gum, or Sweet Sixteen gum, or Blood Orange gum.

There is something in the Touche Niven & Company account which shows how much was spent for advertising Spearmint gum.

3836 Exhibit C of the Touche-Niven report shows the annual amount of sales of the Spearmint gum.

(Mr. Mayer then asked the witness to examine Exhibit C and relate what there was on said Exhibit which shows what the sales were of Spearmint gum.)

There are no sales of Spearmint gum shown on Exhibit C.

Before I could answer the question as to whether there are sales of Spearmint gum shown anywhere on Touche, Niven & Company's report, I would require to look
(3335) through that report. I have studied the report, but I
3837 don't know the details of it. It will take me two or three minutes to find whether there are any sales of Spearmint gum shown in the Touche, Niven & Company report.

(The witness then examined the report.)

Subject to my still further investigation, I would say that the sales of Spearmint are not shown on the Touche-Niven account for any period. I do not know the actual
3838 amount of the sales of Spearmint gum. I cannot state the general amount of the sales of Spearmint gum off hand. I do not know either specifically or generally what the sales of Spearmint gum were during any period, but I can ascertain it or calculate it from the figures shown in the Touche-Niven account. I could ascertain it by taking the sales of Doublemint to all sales for the different periods, as shown on Exhibit C.

Exhibit C shows that in the year 1915, 18.69% of sales were of Doublemint. The ratio of Doublemint sales to all sales was 18.69% of the total: the balance, 71.31 would be Spearmint sales, that is, assuming there were no other brands sold in that year.

3839 My information is that there were no other kinds of gum sold by the Wrigley Company in 1915 besides Doublemint and Spearmint. The source of my information is the Touche-Niven report.

I understand that in 1916, an additional brand, Juicy Fruit was put out. As to the request that I point out here in the Touche, Niven & Company report where I find any information indicating that in 1915 there were no other brands of gum sold by the Wrigley Company than Spearmint and Doublemint, I will say that I might state generally that the Touche, Niven & Company report covering the year 1915—that part of it which covers the year
(3336) 1915 refers only to Doublemint and Spearmint brands,
3840 the inference being that there were no other brands on the market.

Page 9 of the Touche, Niven & Company's report, indicates that in 1915 there were no other gums sold by the Wrigley Company than Spearmint and Doublemint. On page 9 under the heading "Apportioned to Doublemint" —"Spearmint"—"Juicy Fruit"—it shows that these are the only brands to which the expenses are apportioned in the year 1915. Nothing is apportioned to Juicy Fruit inasmuch as it would not seem to have been put on the market until 1916.

3841 I do not find any words or language in any part of the Touche-Niven report saying there was no gum sold by the Wrigley Company in 1915 other than Spearmint or Doublemint. My understanding was that Doublemint and Spearmint were the only two brands sold by the Wrigley Company in 1915. I assumed that in the testimony I have given and in the conclusions I have ar-

3842 rived at. I have assumed that after 1915 the Wrigley Company introduced a new brand known as "Juicy Fruit". My understanding is that the Wrigley Company sold only those three brands: Spearmint, Doublemint and Juicy Fruit during the accounting period. Insofar as my testimony has been given, it has been based upon that supposition. My memorandum, Larson Exhibit 152, has been prepared on the assumption that the three main products of the Wrigley Company were Spearmint, Doublemint and Juicy Fruit.

3843 I did not understand that the Wrigley Company handled other brands during the accounting period than Juicy Fruit, Doublemint and Spearmint, nor did I consider it a matter of any importance whatever in preparing that memorandum, Larson Exhibit 152.

(3337) I have not examined samples of all of Wrigley Company's advertising from January 1, 1911, to November 12, 1918, the end of the accounting period. I have examined samples of the Wrigley Company's advertising covering the accounting period. I examined those samples in the office of the Wm. Wrigley Jr. Company. That

3844 examination was made in the presence of the witness Freeman. I was present quite a good deal of the time last week while he was on the stand. I should say some days. I spent about an hour and a half examining the samples of the advertising. That is the extent to which I investigated the advertisements or studied them.

I have had experience indirectly in studying the effects

that an advertising campaign had on the sales of a corporation.

In the Wrigley Company's case I didn't investigate how much was spent by the Wrigley Company for any
3845 particular type of advertising in any particular period. I didn't investigate the sales of any particular brand of Wrigley Company's gum during any particular period. I did not investigate as to what would be a normal amount to be spent by the Wrigley Company for advertising the Spearmint brand or the Doublemint brand or the Juicy Fruit brand in order to retain a normal amount of sales of those respective brands. I am not in a position to tell the master what amount should be spent for advertising in order to produce a given amount of sales of any brand of gum. I have never been in the gum business or audited any books or records for any concern engaged in the gum business. I hesitate to answer the question that I don't pretend to have any particular
3846 knowledge regarding the gum business, because it is a rather sweeping question to answer, there are so many
(3338) angles to it. I don't know anything about the manufacture of gum, but I know something about the ratios when I see them of the ratio of expenses to the sales of gum and the effect of those expenses on the profits and the extent of the profits to sales, and by comparison of those profits with the sales of other industrial concerns one can form a very accurate conclusion as to the value of the particular business and the capacity.

The only information I have as to any of those percentages is that which I have derived in preparing the case for hearing, and that is based entirely on the Touche, Niven & Company report, and the statements rendered by the Wrigley Company themselves. I don't mean the statements of the Wrigley Company contained in the
3847 Touche, Niven & Company filed report. I mean Larson Exhibits 141, 142, 143 and 144, and the statements contained in the record showing the company's financial position at January 1, 1915, December 31, 1915, 1916 and 1917.

I have not examined the record of the proceedings now before the master, nor have I examined anybody's testimony given before the master. The only testimony I know anything about is that given by Mr. Freeman while I was present. I don't know how many concerns there

were in the United States manufacturing and selling chewing gum in competiton with the Wrigley Company during the accounting period. The number of competitors would not have anything to do with any of the conclusions I reached in this case. In considering the value of the good will, I did not take into consideration the element of competition which a concern must meet.

3848 If I were asked to ascertain the fair, honest, reasonable value of the good will of an institution at a given date, I (3339) would not necessarily in every case ignore the question of competition in that particular line of business. In this case I would ignore it, although there are other lines of business than the chewing gum business in which I would ignore the element of competition in ascertaining the value of good will, where it was reasonably certain or it could be shown from authentic statements that the Company enjoyed more or less of a monopoly of that specific article.

I would not consider, unless the company enjoyed the monopoly of the manufacture of an article, the element 3849 of competition should be ignored. That would depend on the specific case in point. In my previous answer I said a more or less monopoly, by which I would indicate a control of a very large percentage of the output.

The value of the good will of the Wrigley Company is wholly independent of the question of competition, because of the fact that the Wrigley Company are the largest producers of gum in the world, that their brand is known all over the world and sold all over the world, and that they manufacture and sell a very large proportion of the gum that is manufactured and sold.

I do not know the exact proportion of all gums sold during the accounting period that was sold by the Wrigley Company.

I should say that the development of the Wrigley business has been due to the skill of the management and to the constant advertising and the method and places in which advertisements appeared, and the organization. These are in my opinion the direct causes of the good will attaching to the Wrigley Company. I would not say that 3850 the advertising alone is the equivalent of the good will value of the Wrigley business. In my opinion, advertising is only one of a number of elements that I would take into consideration in fixing the value of the Wrigley Com-

(3340) pany's good will. It is the main element. Anyone else that has got the capital can advertise as extensively as the Wrigley Company, and I suppose that anybody else that has got the capital can manufacture chewing gum as well as the Wrigley Company. As to whether anybody else can build up a business as large as Wrigley's and as profitable as Wrigley's if he has got the capital, I will say the door is open for them if they can go to it. I hardly think the death of Wm. Wrigley Jr. would interfere with the progress of the Wm. Wrigley Company's business.

3851 I do not know anything about the business ability of Wm. Wrigley Jr. I do not know anything about his activities in connection with the business. I have made no investigation as to the personnel of the Wrigley Company during the accounting period as to who the active managers were, or as to their skill and ability. I have made no special investigation. I have read a statement made by Mr. Wm. Wrigley himself, as appears in Larson Exhibit 153.

When I fixed the value of the good will of the Wrigley Company, I took into consideration the question whether the old management of the Wrigley Company would continue in its business after November 12, 1918. I assumed they would continue in the management of the Wrigley

3852 business after November 12, 1918, because I knew they did. I did not assume they would continue in charge of the Wm. Wrigley Jr. Company business for any definite number of years after November 12, 1918. So far as my conclusions are concerned, I would have placed the same value on the good will of the Wm. Wrigley Jr. Company if I had made it on November 12, 1918, as I now place on it in my testimony.

In fixing the value of the Wrigley Company's good will, I did not wholly ignore the question as to whether

(3341) the old management would continue with the company after November 12, 1918. I dealt with facts. In the

3853 valuation which I place on the Wrigley Company's good will, I did not take into consideration the possibility of the management resigning at any date subsequent to November 12, 1918, and starting an opposition company to the Wm. Wrigley Company. I am certain that the value of the good will of the Wm. Wrigley Jr. Company on November 12, 1918, would be substantially decreased

if the management retired and opened a competing busi-
3854 ness. By management, I mean the executives, the heads of the different departments in the organization. If those executives or those heads of the departments resigned, I could not place a figure on the amount which the value of the good will would decrease. Anything else that I could say on the subject would be conjecture. I can't say that in my experience I have come across institutions that have spent large amounts for advertising and then subsequently failed. Eliminating my professional activities as an accountant, but as an individual, I have in mind many institutions that spent large amounts of money for advertising their products and
3855 subsequently failed. I will name one very important one—Patterson's Limited Distillery over in Scotland, a whisky concern which spent money lavishly for advertising. I could not say how much they spent. It was far too much. I should say they must have spent five million dollars. I know that the Goodyear Tire & Rubber Company, and the Willys Knight Company and the Sterling Gum Company and the American Chicle Company were all very large advertisers, but I didn't know any of them had failed. I know the Goodyear Company went into the hands of a creditors' committee. I didn't know that the Willys Knight Company or the American Chicle Com-
(3342) pany are now in the hands of its bankers, and that the
3856 Sterling Gum Company sold out to the American Chicle Company a few years ago. The Goodyear was a tremendously large advertiser of various of its products. The mere fact that a concern spends a tremendous amount of money for advertising does not necessarily mean that it will always be successful. Something more is needed to create and maintain success than advertising. Some of those other things are efficient administra-
3857 tion, attention to business, possibly I might add the quality of the product would be an item to be considered. The more money that is spent to advertise a bad article, the worse it may be for the advertiser.

I have had no experience from a professional standpoint with the question of the United Profit Sharing coupons. I have never issued any myself, and I have never redeemed any. I have never been interested in any business as a stockholder or financially or as an advisor in

any capacity whatsoever that has issued or redeemed any type of profit sharing coupons, or trading stamps.

3858 The only investigation I ever made on those subjects were limited to what I did in connection with the examination of Touche Niven & Company's report, Exhibit 132. I know, regarding the payment of income and excess profits taxes, as an accountant I have had to do with accounts that involved such items.

In ascertaining the profits of a concern, I would deduct the amounts paid out for income and excess profits taxes. The net profits would be arrived at after dedue-

3859 tion of excess profits and income taxes. The net profits of any company would represent the balance remaining after deducting the excess profits and income taxes pay-

(3343) able. Income and excess profits taxes have to be paid

3860 like taxes on real estate, if there are any profits.

3861 As to whether I allowed the Wrigley Company to deduct interest on their capital in my determination and conclusion as to the amount of profits that the Wrigley Company eared during the accounting period, I will say I did not form any conclusion as to the amount of profits earned by the Wrigley Company for any period. It is not correct to say that I do not wish to be understood as having expressed or intimated by anything I have said as a witness in this case that interest should or should not be allowed to the Wrigley Company on its invested capital in its business in determining the amounts of profits they made on Doublemint gum during the accounting period. What I said on that subject was that I endorsed the accounting principles laid down in the Touche Niven & Company report, which excluded interest as an ordinary and necessary expense of the business.

3862 Exhibit 152 takes into account the profits of the Wrigley Company during the accounting period as shown by their books and accounts after making certain adjustments thereon as shown in the Touche, Niven & Company's accounts. I think I have here all the working sheets that I used or relied on in preparing myself as a witness in this case, or in preparing Larson Exhibit 152. I have not produced everything that I used or relied on or had before me in coming to the conclusions that I have testified to, and in preparing Larson Exhibit 152. There

3863 is another statement which I think is in my office made up by Touche, Niven & Company, being a reconciliation

of their figures of surplus with the surplus shown by the
(3344) Wrigley Company's books that I used also. I will have that here at two o'clock.

I can't say that there are any documents or writings that I used or had before me in preparing any of my work in this case, or in preparing Larson Exhibit 152 in addition to that reconcilation statement now at my office, and this package of papers that I have produced, and Touche Niven & Company's filed report, Larson Exhibit 132. I also referred to Regulations 45, which is relating to the income taxes and war profits and excess profits taxes under the Revenue Act of 1918. I have that here. I also used Regulations 41, and Accounting Practice and
3864 Procedure, by Dickinson.

I have now stated all the books or records or documents or working sheets that I used or referred to in preparing myself to testify in this case, and in coming to any of my conclusions or in preparing Larson Exhibit 152.

In connection with this matter I also prepared two draft reports. I destroyed them. The object of destroying them was because they were of no use. I showed one of those drafts to Mr. Aldrich. I took it back, though, and I showed one to Mr. Whitworth. I don't know
3865 whether they read it or not. I think one of those destroyed reports was at one time in this room in my grip. It was destroyed since I was sworn as a witness in this case. One of those two destroyed reports was a memorandum made up for myself, as to certain computations of the value of good will after excluding excess profits and income taxes payable during the years 1917 and 1918 and computing the taxes for those years on the same basis as the other years as regards taxes, and I did that for my own information and to see what the results would be. There was no other difference between that
(3345) destroyed report and Larson Exhibit 152. That de-
3866 stroyed memorandum carried the same principles during a period of eight years, that is, from January 1, 1911, to November 12, 1918. That destroyed document showed a value of good will very much more than the value that Mr. Freeman and myself both placed on it in our testimony. That destroyed document was not a document of the type which Mr. Freeman while on the witness stand was asked to prepare and Mr. Aldrich objected to his

preparing. The other destroyed document was a memorandum of good will on theories similar to that in Exhibit 152. It differed from Exhibt 152 inasmuch as it didn't cover the pre-accounting period, the three years and seven months prior to the accounting period, from the organization of the Wrigley Company to the beginning of the accounting period. When I prepared those computations, I did not have that information at hand.

3867 The first one of these documents I destroyed had computations which included the period of time from about July 28, 1914, to January 1, 1915. Exhibit 152 purports to show the value of the good will of the Wrigley Company at the beginning and at the end of the accounting period. I arrived in Exhibit 152 at what I considered the fair value of the good will of the Wrigley business. The basis or formula I used in arriving at that valuaton is the one stated in Exhibit 152; from the net earnings of the corporation for the three years and seven months prior to the inception of the accounting period I deducted, first, the amount of the dividends due and payable in respect of the security ranking prior to the common stock, the balance represented the earnings available and (3346) belonging to the common stockholders. Alongside

3868 those earnings I stated the relative investment or equity which the common stockholders had in the net tangible assets of the corporation. I added those two results for the period of three years and seven months and established respectively the average net earnings available for the stockholders and the average investment in net tangible assets which belonged to the common stockholders. From the former I deducted what might be termed and what was, in my opinion, a reasonable commercial return on that investment, the net tangible assets which belonged to the common stockholders, and the balance after deducting that reasonable commercial return from the average net earnings available for the common stockholders represented the excess earning capacity of the business available for capitalization. This excess earning capacity of the business I capitalized on four different bases, first allowing a return beginning with 14-2/7% down to 10% on the capitalized value, which in each case is equivalent to eight, nine and ten years purchase of this excess earning capacity. I then established a mean between the two extremes which would be equiva-

lent to eight and one-half years purchase, or, in other words, the capitalizaton so ascertained would give a return of 11¾% on the investment.

(3347) Wednesday, April 5, 1922. 2:00 P. M.

3870 JAMES ANGUS STEVEN, resumed the stand for further cross-examination by Mr. Mayer:

In placing my valuation on the good will of the Wrigley business, I assumed that there would be a demand for a good paying business like that of the Wm. Wrigley Company similar to what would exist in the case of other good paying businesses. In placing my valuation on the good will of that business, I considered the amount of capital that would be necessary to conduct such a business. The only capital that I considered necessary to run the business was the investment as shown in Exhibit 152, exclusive of the good will value.

3871 In considering the value of the good will, I did not take into consideration the amount of capital that it would be necessary to have to acquire such a business, that is, the value of the tangible assets, plus the value of the good will. That factor does not enter into any computation of good will value. I don't think the smaller the amount of capital necessary to acquire a business the larger the number of buyers will be. I don't think that would have any bearing on the demand or lack of demand for a business. I do not think the question of the number of probable buyers of a business will influence the value of the business or the amount that can be acquired for it.

3872 On November 12, 1918, I considered the value of the good will of the Wrigley Company to be worth approximately from $14,700,000 to as high as $21,000,000 and my opinion of the fair valuation of that good will is expressed in the mean between these sums of approximately $17,800,000. On November 12, 1918, the amount
(3348) of net invested capital of the Wrigley Company was $7,500,000, approximately. In my opinion, the good will of the business at that time was worth about 250% of the net value of the tangible assets. If my value of the good will was correct, it would take about $25,000,000 to have acquired that business on November 12, 1918.

In placing my valuation on the good will, I took into consideration the condition of the money market on November 12, 1918. I have had specific financial experience. I have been connected with a financial institution outside of my auditing for the Winslow Bros. Company. I had
3873 such a connection with the firm of chartered accountants with whom I served my apprenticeship in Glasgow, Scotland. That was 15 years ago. My firm were chartered accountants and stock brokers and I was 13 years on the Stock Exchange in Glasgow, Scotland. I have been in this country for over 15 years.

I have had no special dealings or experience with financial institutions or in financial matters during that 15 years, except in the auditing of stock brokers' accounts.

3874 I cannot refer to any specific case of the flotation by a large institution in the United States in the specific month of November, 1918. I did not make any investigation of that subject as of November 1918, in order to prepare Exhibit 152, except my general knowledge.

I know what the banks in the City of Chicago charged on loans made to financial institutions of the highest credit during the month of November, 1918.

Good will has no value separate and apart from a business. If there was no business, there would be no good
(3349) will attached to it. I know you cannot sell the good
3875 will of a business separate and apart from that business.

As to whether you can convert the good will of a business into money before you sell the business as a going concern, I will say you cannot convert it into money unless there is a distinct transaction, but that cash value can be capitalized and by that means converted into money. The mere capitalization of the value of good will of itself does not convert it into money, but it is a means whereby it can be converted into money. That does not necessarily mean you must get somebody to buy the business and place that value on its good will, provided you can get any one to buy the stock which would represent the capitalization.

The question of good will of a business is really a matter of agreement and of bartering.

I do not know anything about the risks peculiar to the
3876 gum manufacturing and selling business. I do not know anything as to what the normal rate of profit is in the

gum business. I know what the normal rate of profit
3877 was during the accounting period in the gum business. I cannot give the names of a single gum manufacturing business or gum selling business with which I have familiarity as to the profits made at any time between July 28, 1914, and November 12, 1918, other than the Wm. Wrigley Jr. Company.

I know absolutely nothing as to what is the normal rate of profit in a gum business or what that normal rate was during the accounting period, excepting only in so far as my knowledge of the results obtained by the Wrigley business is concerned.

(3350) I obtained no knowledge from my investigation of the Wrigley business which gives me any information as to what the rate of profit was during the accounting period on anybody else's business. I have no knowledge of any kind as to what the normal rate of profit was during the accounting period on any gum business other than the Wrigley business.

3878 In determining the value of the good will of a business, I think I should limit it to the particular time as to which I was ascertaining the value. I think that I should take into consideration not only the rate at which the banks on that date loaned money, but the rate that merchants in similar lines of business expected to earn from investments in that type of business.

I know of no large nationally known institution that floated any securities in 1918. In fixing my value of the
3879 good will on the Wrigley business, I had no particular information to the effect that there were few men that were able to successfully conduct such a business, and therefore did not take that fact into consideration, assuming it is a fact.

In considering the value which I placed on the Wrigley Company's good will, I took into consideration any special or extraordinary conditions that affected that business at any time prior to November 12, 1918. Those were the exceedingly heavy and abnormal excess profits taxes paid by the company in 1917 and 1918 as against prior years. I know of no other special or extraordinary conditions that I took into consideration during that period. There were none that I knew of.

3880 In fixing my value on the Wrigley Company's good will I did not assume that the income and excess profits taxes

(3351) would remain as they were. I assumed the actual facts in the case. They were that they had abnormal taxes to pay in the years 1917 and 1918, as against the taxes paid in previous years. I ddn't make any assumption as to what income and excess profits taxes they would have to pay after November 12, 1918, nor did I make any computation because that was not necessary and in any case there would be no assumption necessary if the computation were made because it would be actual facts I would be dealing with.

I didn't give any consideration whatever to the question as to whether or not the income and excess profits would be the same after November 12, 1918, as they were during the years 1917 and 1918. In fixing the good will,
3881 I made no deductions on account of income and excess profits taxes that were in force in 1917 and 1918. I made no deduction because if changes were to be made it would be the other way, it would be an addition to profit to put them on an equal basis in the different years.

In considering the value of good will, I did not base my value of good will on what I expected the future profits would be. I did not take into consideration in fixing the value of the good will the question of what the future profits of the Wrigley Company could be expected to be after November 12, 1918. In fixing my value of the good will after 1918, I did not take into consideration at all the question of any possible state legislation that might effect the gum business, nor did I take into consideration at all the question of the duties that might have to be paid after November 12, 1918, on the material used
(3352) in manufacturing Wrigley gums, nor the history or
3882 amount of the duties that the Wrigley Company had to pay during the accounting period or at any time. As stated in Exhibit 152, the bases of computations were the profits earned by the company throughout the period mentioned in the Exhibit and the investment in the net tangible assets during the period.

Those were not the only two things I took into consideration at that time in arriving at my value of the good will. I took into consideration in arriving at the value of the good will another thing besides the profits as shown by Exhibit 132, and the amount of investments. The third factor was what a reasonable, commercial return on the investment in net tangible assets representing

3883 the common stockholders' equity therein. I also took into consideration what would be a fair and equitable basis on which to capitalize the excess earnings of the business after providing for a reasonably safe commercial return on the investment. I also took into consideration the trend of the business, that is to say, whether it had been showing a healthy increase or whether it had been going back. By trend of business, I mean the sales from time to time.

I left out of my calculations in Exhibit 153 the first part of the accounting period, namely, from July 28,
3884 1914, to January 1, 1915, for the reason that in the one case, that is, the peroid immediately preceding the accounting period, the period on which to make comparisons and base computations, comprised a period of three years and seven months and the period immediately prior to the end of the accounting period, a period of three years, ten and one-half months, was taken for the reason that in my opinion those two periods formed a
(3353) very accurate and reliable comparison.

I think it is fair if I want to honestly find out the value of a good will during a specific period to ignore the trend of the business during a part of that accounting period. I don't know as a matter of fact that the sales during the last five months, viz., for August, September, October, November and December, 1914, were about $600,000 less than the Wrigley Company's sales of gums during the same months of 1913. I don't know as a matter of fact that sales of gum for the whole year of 1914 were nearly a million dollars less than the Wrigley Company's sales for the year 1913. I don't know as a matter of fact that during some of the last five months
3885 of 1914 the sales of gum were less than they were during similar months in 1912. I did not assume in making my calculations and in arriving at the valuation of the good will that the sales of the Wrigley Company gums constantly increased from 1911 right through to November 12, 1918, but I assume that the trend of business had been to show a healthy growth throughout the period mentioned.

I took into consideration the effect of the war on the Wrigley Company's business. The war didn't seem to have any effect on the business from an earning standpoint. I did not assume that the war diminished the

profits of the Wrigley Company, or increased the profits of the Wrigley Company, in fixing my value of good will. As a matter of fact, I didn't take the war into consideration at all as an element in fixing the value of the
3886 good will, except in so far as the excess profits and income taxes in 1917 and 1918 were in my opinion extra-
(3354) ordinary and so tended to reduce the profits for those two years. There was the only effect in my estimate of good will that could in my opinion be attributable to the war.

In fixing my value of the good will, I did not take into consideration any extraordinary conditions or circumstances occurring after November 12, 1918, or any circumstances or conditions whatsoever that occurred after that date.

In my Exhibit 152, I understand to fix the value of the good will not only on November 12, 1918, but also on July 28, 1914. In considering the value of the Wrigley Company's good will July 28, 1914, I did not take into consideration exactly the same type of conditions and circumstances as I did in determining the value of the good will as of November 12, 1918. There were factor of 1917 and 1918 which were special and
3887 superior. Those were the excess profits and income taxes of those years.

Eliminating the income and excess profits taxes, in arriving at the value of the good will as of June 28, 1914, I took into consideration all of the circumstances, conditions and considerations that I relied on in fixing my value of good will as of Novemher 12, 1918. Among other things that I took into consideration in fixing the good will value as of July 28, 1914, was the trend of the Wrigley business. Broadly speaking, that means I took into consideration the sales in 1911, 1912, 1913, and the first seven months of 1914, and also the percentage of the profits to the sales. I have not said that one of the things upon which I based my value of good will as of November 12, 1918, was the Wrigley Company's adver-
3888 tising during the accounting period.

(3355) The only consideration given to advertising was to
3888 charge it off as an ordinary and necessary expense like salaries and every other expense of the business. In fixing value of Wrigley Company's good will as of November 12, 1918, I paid no attention to the Wrigley

Company's advertising during the accounting period excepting that it was written off in the accounts of an ordinary and necessary expense of the business.

My conclusions and my report, Exhibit 152, are based
3889 upon an assumption that the moneys which the Wrigley Company paid out for advertising during the accounting period were ordinary and necessary expenses and so charged. I did not pay any attention at all in determining my value of the good will of the Wrigley Company as of July 28, 1914, to the Wrigley Company's advertising prior to that date. That was not given any more consideration in that period than it was in the subsequent period, that is, at the end of the accounting period. In the period before July 28, 1914, or during the accounting period, I treated and regarded advertising as an ordinary and necessary expense of the business. I didn't investigate the advertising of the Wrigley Company in 1911, 1912 and 1913 and the first seven months of 1914, nor in any other period. I had no more occasion to examine the advertising during either the period to July 28, 1914, or during the accounting period that I did to examine into the salaries paid the stenographers or the administration expenses. The amounts
3890 expended on advertising or salaries or any other ordinary or necessary expense of the business had received no consideration whatever in arriving at the amount of good will.

I don't think that my opinion would be altered one
(3356) way or another as to the value of the good will of the Wrigley Company if I knew during the accounting period some foreign countries in which the Wrigley Company was selling gum were changing their expert duties on material bought by the Wrigley Company and used in the manufacture of gum. I don't think the effect would be substantially felt and it would be a question how long that change of policy would last.

My valuation of the good will of the Wrigley Company on November 12, 1918, would not be affected if I knew that some of the territory in which the Wrigley Company had been selling gum profitably during the accounting period was shut off after the accounting period, unless the sales of product in that territory amounted to a substantial part of the Company's business. I think that the value of the good of a business

is likely to be affected by the possibility of legislation
3891 which would adversely affect that business, if that legislation in turn affects the profits to a substantial extent. I would want to know in determining the good will value of a business whether or not there was any reasonable likelihood of there being legislation which would affect the profits or the business, if I were making a computation at a very recent date, for instance, at some date within less than one year. I mean that if I were valuing the good will and other intangible assets of the Wm. Wrigley Jr. Company as of any date of this year, I would give that feature some consideration, but only if that consideration were necessary, having regard to the questions of fact to be brought out by any valuation of the good will. In other words, at November 12, 1918, that feature would in my opinion have had no bearing on the
(3357) good will of the Wm. Wrigley Jr. Company because the value at that date for the particular purpose for which it was computed would remain the same whether or not subsequent legislation were enacted which might operate as a hardship to a certain extent on the Wm.
(3892) Wrigley Jr. Company. I mean that the good will and other intangible values of the Wm. Wrigley Jr. Company at November 12, 1918, had a value of not less than $17,800,000 in my opinion and that any changes in legislation, such as you have mentioned, even if they did operate as a hardship on the Wm. Wrigley Jr. Company would not tend to lessen the value of the good will at that date any more than similar changes which would operate to the benefit of the Wm. Wrigley Jr. Company would not also alter the value of that date.

3893 In fixing my value of good will as of November 12, 1918, I did not take into consideration at all any contingent liabilities of the Wrigley Company because of the suit now on hearing. It would not in my opinion be a circumstance that ought to be taken into consideration in determining the value of the good will of the Wrigley Company as of November 12, 1918, that a suit was brought against the Wm. Wrigley Jr. Company on July 6, 1915, which was within the accounting period, alleging that the Wm. Wrigley Jr. Company had infringed the plaintiff's package and was seeking to enjoin the Wrigley Company from using that package and to compel the Wrigley Company to account for its profits.

I do not think that where a person is sued for infringement of a patent that the possible liability that may result from the prosecution of that suit is an ele-
3894 ment that should be considered in determining the net assets of that concern. One can't consider possibilities in determining net assets. If I were conducting a busi-
(3358) ness for a given year and during that year one of my employes had injured some one which resulted in the injured person suing me during the year to recover damages, I would not in determining the amount of profits for that year pay any attention to the pending suit. I think I would be prudent enough to have that contingency covered by an insurance policy and the charge for the premium on that policy would be the only charge against the business for that particular year.

If I were auditing the accounts of an institution that carried no insurance, and I wase employed as an expert accountant to ascertain the profits made by that concern during a specific year, and I found during that year there had been some personal injuries sustained by employes of the concern and that during that year they had sued the concern to recover damages on account of the personal injuries, I would not in auditing the books of that concern and in telling them what their profits were for
3895 the year, ignore the presence of those suits. The pending suits would have no bearing whatever on the profits from operations, but in the report to the directors or to the stockholders of the particular company, by either of whom it is customary to be employed, attention would be drawn to the fact that those suits were pending. I would not do that so they might see that possibly the amount of profits they would otherwise have earned might have to be diminished by the result of the subsequent litigation, but to show what their net worth would be if the suit went against them.

If I as an expert accountant were auditing the books of a corporation and I found that during a given year they paid out a thousand dollars for a judgment procured
(3359) against the concern, during that year on account of a personal injury, I would take that thousand dollars into consideration in figuring the profits of that year. The spending of that thousand dollars would affect the profits
3896 for that year. The payment of that thousand dollars reduces the profits by one thousand dollars.

When you come to ascertain the profits made by a concern, you can ignore claims which are asserted against the company, whether it is on account of infringement of a patent or a package or on account of personal injuries.

In fixing the value of the Wrigley Company's good will, I did not take into consideration at all the amount of capital which is required to enter upon the same business. The factors that I took into consideration in fixing the value of the good will of the Wrigley business have already been enumerated in the testimony here and I don't think I can add anything to them.

I did not assume at all that the injunction which was issued against the Wrigley Company in the case now on hearing would affect its business or its profits.

3897 In arriving at the value of good will, the sales were not used as a basis for the computation of good will except in so far as the business of the company showed a healthy growth.

As to whether in fixing the value of the good will of the Wrigley Company as of November 12, 1918, I assumed that the change of the color of the Doublemint package would not affect the sales thereof or the profits

3898 therefrom, I will say that factor didn't enter into any consideration of the value of the good will at November 12, 1918.

From my observations and my experience as an expert accountant, I know that there are many businesses that manufacture more than one product, and that sometimes

(3360) a manufacturer will manufacture products that yield profits and others that cause losses, and that the net result of the business of such institution would be profitable notwithstanding some products are sold at a loss. So that in my opinion it is possible that a business would have a valuable good will although some branch was not profitable.

3899 When you come to allocate the good will of that kind of a business, you would not allocate any good will to the unprofitable branch of the business. I would say broadly speaking that it is a safe assumption to state that as a matter of fact where you have a business which manufactures several articles and profits are made on some and not on others, before you can ascertain how to allocate the good will of that business you must

know the history of each branch or portion, that is to say, you must know what products there are making money and what products are losing money.

3900 I made no investigation in the Wrigley case to find out whether Wrigley's Spearmint gum was being sold at a loss or at a profit during the accounting period. I did not make any investigation as to whether Wrigley's Juicy Fruit was being sold at a profit or not during the accounting period. I did not make any investigation with regard to whether the separate brands dealt in by the Wrigley Company prior to and up to July 28, 1914, were sold at a profit or at a loss. The only information on which my computations were based was that shown in the balance sheets for 1911, 1912 and 1913, given by the Wm. Wrigley Jr. Company. And those balance sheets do not show anything with regard to the profits on any particular brand of gum.

I did not make any investigation as to whether Doublemint was sold at a loss or a profit other than my reading of the Touche, Niven & Company report, Larson Exhibit 132. I regard good will as asset.

(3361) I did not treat good will as an asset in the formula
3901 that I used in Larson Exhibit 152. I do not regard good will as a profit. I regard it as something separate and apart from a profit.

(3362) As to whether in estimating the value of good will I ought to take into consideration any profits or losses which are not due to the ordinary operation of the business I will say that would depend to a great extent on the value of those profits or losses, for instance, if one of the executives or heads or the president of the company was speculating on the Stock Exchange or on the Board of Trade, one would hardly expect if those speculations resulted in a loss to take them into consideration of the earning capacity of the business.

If the Wrigley Company made profits during the accounting period from investments and not from the op-
3902 eration of its gum business, I think that ought to be taken into consideration in determining the value of good will.

If the Wrigley Company, during the accounting period, had more assets than it needed for the ordinary, usual, profitable conduct of its business, and made profits from those excess assets, I think those excess assets ought to

be taken into consideration in determining the value of the good will of the business. I also think that the profits from those excess assets should be taken into consideration in determining the value of the good will of the business. I don't think that both the principal of those excess assets and the interest thereon should be excluded in the case of the Wm. Wrigley Jr. Company particularly, and in no other case should they be excluded unless the capital so tied up and invested formed a very considerable
3903 part of the total. I think that the rest of whether such excess costs and interest should be excluded or included
(3363) in determining the value of good will is dependent upon the quantity of those excess assets.

I never read an article written by the witness, Herbert C. Freeman, on "Some considerations involved in the valuation of good will", to which he referred and which he said was reported in the October, 1921, number of the journal of accountancy. Mr. Freeman says in that article:

"The assets should be carefully scrutinized for any items of a character extraneous to the business. If the reserve fund is carried invested in gilt edge securities the return on which is lower than the rate of initial return which might reasonably be charged on capital invested, it is proper to exclude both principal and income from the bases of calculation."

I agree with that. I do not want to change any of the answers I have given to any of the preceding questions.

In my opinion the exclusion of the income from those investments and the amount of capital tied up in those investments depends entirely on the extent to which the
3904 profits earned by the business and the tangible capital tied up in the business is related, the relation of the one to the other, whether it is great or whether it is small.

Mr. Freeman in the article referred to says:

"Particular consideration must be given to the possible effect of legislation or tariff upon the future of a business. Other things being equal, a business which is little dependent on tariff protection will have a good will value measured by a greater number of years purchase than one which is more likely to be adversely affected by changes in the tariff rate."

The question is too much of a hypothetical one for me to answer right away whether I agree with Mr. Freeman.

(3364) Neither Mr. Freeman nor anyone else can foresee any legislation, and any attempt to do so would involve calculations and computations incidental to good will in the
3905 realms of speculation which would never exist.

In estimating the value of the good will I considered interest paid on borrowed moneys if there was any paid. If there was any income from reserve funds, I took that into consideration in estimating the value of good will. I don't know whether there was any such income or not. In estimating the value of the good will I took into consideration moneys received by the Wrigley Company from their tenants. I took it into consideration as part of the profits. If they were included in the profits as per the Wrigley statements, they were included in my computations. In estimating the value of the good will I made no special deductions for reserves. Unless they
3906 were made by the Wrigley Company, I did not make them. In estimating the value of the good will I did not take into consideration the reasonable value of any premises owned and used by the Wrigley Company during the accounting period. I do not consider the value of good will as income. I consider the value of good will as an intangible asset to the business after it has been capitalized. It may exist, but does not emerge until after it has been capitalized.

No change in the good will value would appear in the
3907 profit and loss account. Profits are not measured by the net increase in capital during a given period. In order to ascertain the profits of a concern during a given period I do not take their net assets at the beginning of the period and then the assets at the end of the period, and take the resulting difference as the profits after deducting the liabilities.

It is customary in estimating profits or in ascertaining
(3365) profits to value the stocks of merchandise on the basis of cost or market price, whichever is lower. No increase or advance in the cost price of the merchandise would be taken into consideration in figuring profits. It has been a principal of accounting for the last few hundred years, a recognized principal of accounting.

If I were a manufacturer and owned a factory and
3908 plant equipment, machinery, material, stock on hand, some manufactured and some in process of manufacture, accounts and bills receivable, and I was going to sell out,

I would submit an inventory of the assets at what I thought I could get for them and what they were worth to me. I certainly would not give them at any other price or sell them at any other price than what I thought they were worth to me. If I were preparing an inventory for the purpose of ascertaining what profits I made in my business, I would make an inventory once a year of the
3909 manufacturing and working materials only. I would make an inventory of the merchandise stock, the raw and uncompleted stock and any finished stock I had on hand. I would take the value at cost or market, whichever was lower. The "cost or market, or whichever is lower" is not a phrase which has been created recently by the new federal tax law. I know it has been an expression that I have been familiar with ever since I started my profession 28 years ago.

I think I have a pretty fair idea what institutional advertising means. By that I would say advertising a trade-name, for instance, I know of a case where institu-
3910 tional advertising has possibly been the main element on which the good will value and intangible value has been based. The business is Coca Cola. There are others. I may possibly remember them later on. I can-
(3366) not think of another just now. I have not given them any consideration right now particularly. I have not given any consideration to that particular point. I happened to be concerned indirectly with Coca Cola at one time and happened to know about that. I don't know whether the Coca Cola Company sells anything besides Coca Cola.

The Bettendorf case, to which I referred, involved the question of determining the good will of something. It
3911 was a manufacturing business. Somebody died, and the question was what was the fair good will value of that business. I had something to do with determining that good will value. The business involved was entirely
3912 dissimilar to the Wrigley business. In the Wrigley case we have the manufacture of chewing gum, and in the other case we have the manufacture of railway supplies. The fact that the Wrigley Company case is a gum case and the other a railway supplies case alters the proper rule to apply to ascertain the value of good will; because one is more profitable than the other. Possibly it would not change the formula. Possibly it would change the

items that enter into the minuend. The doctrine I am applying in this case to good will is in common use, and is customarily used in arriving at good will values.

As to whether in the Bettendorf case the same type of
3913 items enter into determining what the minuend should be, I will say I only mentioned that case of *Bettendorf* vs. *Bettendorf* because I know it is a matter of public record, I assume it to be inasmuch as it was threshed out in the courts of Iowa, and I rather think I was acting in a fiduciary capacity when I made up that valuation in the same
(3367) manner as I regard my retention in connection with this *Wrigley* vs. *Larson* dispute, and I do not feel qualified, or I do not feel that I am justified in going into any further particulars. If any further particulars are required, or any detailed particulars are required in that case, I refer you to the records.

3914 The Bettendorf case was in an Iowa court. I was a witness in the case and prepared a report. The report I prepared in that case was prepared substantially on the same formula that I prepared Larson Exhibit 152. That report was filed in court. The Supreme Court of Iowa decided it.

3915 As regards the case of *Bettendorf* vs. *Bettendorf*, I made a ten years' investigation of the business of the Bettendorf Axle Company. As a resutl of that investigation I and Mr. Seatree, who was one of the partners in Price, Waterhouse & Company, computed the value of the good will of that company on bases which are substantially similar to those outlined in Larson Exhibit 152. By that I mean that I ascertained the minuend and the subtrahend and multiplied the balance in the same way as I said this morning I did in Larson Exhibit 152.

3916 In Larson Exhibit 152 I used an aggregate of 8½ years for the number of years purchase. It is not the average I used in the Bettendorf case. I don't remember precisely the average that I used in the Bettendorf case. I
3917 am not certain whether the report I prepared in the Bettendorf case was filed in court. It was certainly exhibited in the case. I did not use that report in preparing Larson Exhibit 152. I had possession of a copy of the Bettendorf report at the time I prepared Larson Exhibit 152, but I did not rely or refer to the copy of that Bettendorf report in my preparation of Larson Exhibit 152.

(3368) I have read the copy of the Bettendorf report re-
3918 cently. I should say two or three days before I came
3919 into this case. I was first spoken to in connection with this Wrigley case about two weeks ago, and within that two weeks I have examined a copy of the report that I prepared in the Bettendorf case. I have that report now, but I have not produced it here. I have read it over in the last two weeks.

I now say I don't remember what multiple I used or what number of years purchase I used in the Bettendorf case. I read that report along with other reports I had
3920 written, for the purpose of refreshing my memory on good will, generally, and the various factors to be taken into consideration. My reading of the Betterdorf report refreshed my recollection as to matters pertaining to good will.

As far as the Bettendorf is concerned, I did not use it in making up this report any more than I used any of the other reports that I have made up on similar matters. I read that report along with other reports and other articles on good will for the purpose of getting a broad background of the whole matter, and if I were to produce that individual report, I would feel—if I were to feel justified in producing that report, I would feel that I should produce every other article and every other report that I have read on that subject.

3923 I did not have the Bettendorf paper in my hand during the time or any part of the time that I was preparing or finally formulating the report that I have filed here today. I had it in my hand possibly two or three days before that. It was after I had been asked to make an examination here of the Touche, Niven report and to
(3369) testify in this case. I examined that report with other papers prepared by myself and by other accountants. I have a feeling that I ought not to produce the document here. And for another reason. I got it from a private source.

3924 (The master then stated that he would decline to enter an order which had just previously been requested by Mr. Mayer that the witness be directed to produce the so-called Bettendorf report.)

The first memorandum that I prepared in this case was merely a memorandum with certain computations

that have been torn up. I prepared no second memorandum or report in this case.

Exhibit 152, as filed with the master, is written on a typewriter. I did not do the typewriting. Some girl did it. She had a copy before her from which she made the
3925 original Larson Exhibit 152. I prepared the original document which she copied on the typewriter. That was the second report that I prepared in this case. That has not been destroyed. It is here. Mrs. Grace Coulter is the name of the stenographer who assisted me in preparing this second memorandum or report. She works in my office. She has been in my employ since 1920.

(The witness then produced certain papers which he said was the second report which the typist copied. Said papers were marked for identification Larson Exhibit 154, sheets 1 to 26, inclusive.)

3926 There are no other reports or memoranda I prepared in connection with this case except the memorandum that was destroyed and Larson Exhibit 154. I have forgotten the multiple that I used for the number of years purchase in the Bettendorf report. In that case I ascer-
(3370) tained the net profits of that business for a period of ten years. My recollection is that I took the average profits of that business for ten years prior to the date at which I wanted to ascertain the good will. My recollection is that in that case I took seven per cent as a reasonable commercial rate of return on the investment.
3927 I should say that concern had been in business approximately 25 years before the date at which we were arriving at the value of the good will.

That report in the Bettendorf case was prepared by me in the early part of 1915. It was prepared while I was with Price, Waterhouse & Company. On the date I was to ascertain the value of the good will of the Bettendorf Company I would say it was a concern of six or seven millions. I don't remember what the capitalization was then. He had no bonded indebtedness. There was more than one kind of stock. The Bettendorf Company had two kinds of stock, preferred and common.

3928 In the Wrigley case I deducted 6% as dividends on the preferred stock in ascertaining the net earnings of the Wrigley Company. In the Bettendorf case I think I also deducted 6%. I testified in the Bettendorf case about
3929 1915. I cannot remember whether, as a witness in the

Bettendorf case, I testified to the proper method of arriving at the good will of the business there involved. In the Bettendorf case I had already come to the conclusion that the proper way of valuing good will of a manufacturing company is by adopting the formula that I have used in Larson Exhibit 152, that being the customary method of arriving at good will values. I don't remember whether the court in that case adopted my theory. I don't know where the case is reported.

(3371) Thursday, April 6, 1922. 10:30 A. M.

3930 (A discussion took place, at which time the counsel for the Wrigley Company asked for an extension of time to complete and file the Canadian report. The master said he would extend the time for filing a Canadian report until April 21, 1922, as he was inclined to the view that reasonable diligence had been used in preparing it.

3936 The master also extended the time for filing an Australian report until July 6, 1922.

3937 The witness, James Angus Steven, said that he wished to make a statement regarding why he was not in position to produce the Bettendorf report. The master allowed him to make the statement, which was to the effect that reports by accountants to their clients were of a confidential nature and the sale property of the client; and that the report in question was made to a client of Price, Waterhouse & Company while he was in their employ, and that it contained matters of a personal nature as well as confidential details of earnings, contracts, patents and pending litigation.

Mr. Mayer again asked that the report be produced, but the master overruled the request.)

3940 The witness continued:

The question of valuing good will comes up frequently in connection with the payment of income and excess profits taxes to the United States Government. I don't know that the United States Government, in ascertaining the value of good will, has laid down a formula for ascer-

(3372) taining how to get the value of good will on March 1,

3941 1913. I do not know that the United States Government has passed a regulation or rule saying that the value of good will as of March 1, 1913, shall be determined by allowing, out of average earnings, over a period of years,

preferably not less than five years before March 1, 1913, a return of 10% upon the average net tangible assets for the period, and then provides for ascertaining the surplus and capitalizing it.

I produced here yesterday Regulations 45, relating to income taxes, and also Regulations No. 41, relative to war excess profits taxes, and also a book on accounting by Mr. Dickinson. I produced those regulations along with the working sheets I used in preparing Exhibit 152, because I had them in my bag at the time. I now say that I did not use Regulations 41 and 45 in preparing Exhibit 152. Regardless of those two Regulations, I have had experience as an accountant or otherwise in preparing returns for the United States Government that involved the question of valuing good will. As to why, under Government Regulations good will is to be valued, I will say the Government does not insist on good will being valued. The Government does not insist on the good will being of value. In my opinion the question of the value of the good will of a corporation's business on March 1, 1913, is immaterial in ascertaining the item of income and ex-
4943 cess profits taxes to be paid. It is material for the purpose of ascertaining the invested capital which the Government allows a return on. I don't know that the Government has laid down certain rules and regulations by which to determine what the value of good will of the business was on March 1, 1913. I have never had occa-
(3373) sion to work back. I mean to say that it would be possible to prepare a proper return for a tax paying corporation, say, for the years 1919 or 1920, without reference to what the value of the good will of that company was on March 1, 1913. I have made a return for corporations in the years 1919 or 1920 with a view of paying income or excess profits taxes wholly without reference to the value of the good will on March 1, 1913. I have made returns or participated in the preparation of returns for the years 1919, 1920 and 1921, in which I had occasion to consider the good will value as of March 1, 1913. As to those particular returns, I, in fact undertook to find out
3945 the good will value as of March 1, 1913, I used no formula for that purpose. In those cases I used good will on the books as the basis of the computations. As to whether I made any effort in those cases to find out what the Regulations and rules and practice were of the Treas-

ury Department with regard to the proper method of determining the good will, I will say I knew that already.

In 1917 the rule was the Government allowed 20% of the good will value which is the value of the intangibles. The good will value was the value in the particular cases to which I have reference of the stock or cash issued therefor.

I have never prepared any return wherein it became necessary for me to apply any regulation respecting the ascertainment of the value of the good will as of March 1, 1913, where I used a return of 10% on the average net tangible assets.

3947 If I testified that I had prepared income tax returns in a certain set of cases in which I had something to do with the valuing of the good will as of March 1, 1913, that was (3374) an error, because I did not get the full purport of counsel's question. I did not have experience in preparing any income tax return which involved the valuing of good will as of March 1, 1913. The particular point never having come before me, I would say that I have not the specific information and the rules or regulations of the United States Government or the Treasury Department with regard to what is a proper method for valuing good will as of March 1, 1913.

3949 I have heard of the Studebaker Corporation. To the best of my knowledge and belief they are a large, reputable, and prosperous concern. I was not aware they had to pay 8% at least for moneys that they borrowed along about November, 1918. As to whether I knew that they issued fifteen millions of 7% serial gold notes in 1918, to be dated January 1, 1919, that were sold to the public on bases that yielded as much as 7¼%, I will say I knew of the issue of the notes, but I didn't know the details concerning it.

I did not know that in about September, 1918, the Interborough Rapid Transit Company of New York floated a $33,400,000 issue, or some part thereof, by issuing 3-year secured convertible 7% gold notes. I don't know whether they are a prosperous corporation, but they are a very large corporation.

Assuming that these notes were put on the market by such houses as J. P. Morgan & Company, Lee, Higginson & Company, First National Bank of New York, The National City Bank, Harris Forbes & Company, and Halsey,

Stuart & Company, I would say they were a first class investment. I don't know that they were put on the mar-
3951 ket to yield about 7½%. I don't know that the American Tobacco Company, about October 25, 1918, issued its
(3375) 7% serial gold bonds aggregating $25,000,000 that were put on the market by Kidder, Peabody & Company, and the Guaranty Trust Company of New York, under basis of about 7.25%.

I would regard those securities, speaking generally, as gilt edged securities issued by gilt edged concerns, assuming they are first liens on the property. It is my understanding that a gold note would be amply secured by a lien on the property. I regard these gold notes as debenture notes. I understand a debenture note to be a secured note.

As to the request that I name any note that is now on the market that is a debenture note, that is secured unless the word "secured" is used in connection with its description, I will say my experience has been, to the best of my knowledge that the most of these notes and bonds are secured by trust deeds over certain of the property.
3952 When the Studebaker Corporation put upon the market what is described as 7% serial gold notes, that description conveys to my mind that the notes are secured. Those securities that have been referred to were put upon the market at just about what I would expect them to yield. I don't know that about November, 1918, the Standard Gas and Electric Company issued its 3-year 7% collateral trust gold notes, dated September 3, 1918, that were put upon the market to yield 8%. As to whether I regard 8% as a high yield on an investment for November, 1918, I will say it might have a very low yield. You have to consider the class of securities behind it and the earnings behind the securities.
3955 In my testimony and in my Exhibit 152 I assumed the value of the net tangible assets on July 28, 1914, to be
(3376) $5,554,214.75. I concluded the value of the good will of the Wm. Wrigley Jr. Company, on the same date, July 28, 1914, to be on the basis of 7 years purchase, $10,901,-777.18. 8 years purchase, $12,459,173.92. 9 years purchase, $14,016,570.66. 10 years purchase, $15,573,967.40. If we take a mean between the two extremes, we get a good will value of $13,237,872.29. I assume the annual profits of the Wrigley Company from January 1, 1911,

to July 28, 1914, to have been $6,562,310.32 multiplied by 12 and divided by 43. In placing my value on the good will of the Wrigley business as of July 28, 1914, I did not consider how much it would cost anyone to build up a business of the exact kind and type and condition of the Wrigley business at that date. In giving my value of the good will of the Wrigley Company as of November 12, 1918, I did not take into consideration how much would cost anyone else to build up a business of the exact type, kind and character as the Wrigley business was on that date.

3956 I don't know of any other customary method to determine the value of the good will of a manufacturing business besides that which I used in my Exhibit 152. The only method by which, in my opinion, the value of the good will and intangible assets of any business can be ascertained is by capitalizing the excess earning capacity of the business over and above a reasonable commercial return based on a certain number of years purchase of these excess earnings. I have seen one or two, quite a number of other methods outlined from time to time as used or recommended for the determination of the value of good will. None of them, in my opinion, were worth any consideration.

(3377) I have not read the article of the witness Herbert C.
3957 Freeman on "Some consideations involved in the valuation of good will", appearing in the Journal of Accountancy of October, 1921.

On page 254 of that journal Mr. Freeman states:

"It is my opinion, that the value of good will is rather to be based upon the capitalized value of the normal net profits per unit sold, computed on the number of units sold during the last fiscal year, increased or decreased in the proportion which the number of units sold during the last period bears to the average for, say, the last five periods, or which the average for, say, the last three periods bears to the average for the last five or seven periods."

That is a new theory on the basis of computation for good will that I have never seen advanced before. I have not given it any study, but I think that inasmuch as the
3958 unit profits or the results got from calculating unit profits would be pretty much in line with the results got from calculating on the basis of earnings, I should think

there would be very little difference between the two methods.

I have not given the method of using the units sold as a basis for determining the value of good will any study to say whether or not I would agree with it.

I have heard what is known as the annuity theory by which to determine the value of good will. That theory is synonymous with the present value. What the number of years purchase at a certain rate of return or a certain income per year would amount to over a certain number of years. I have known of someone recommending as a proper way to find the value of good will by finding the average annual profits of the business for a given period of years, and then deducting interest on the average net
(3378) tangible capital used during those years, and then finding what sum of money would create or yield as an annuity the difference between the interest on the net capital and the average annual profits. I used that method in the present case. The annuity theory has something to do with using a multiplier. I used a multiplier in determining what sum will yield a certain annuity.

Suppose I found that the average annual profits of a concern for, say, three or five years, were a thousand dollars, and suppose I assumed that 7% was a fair rate of interest to be used on the average net tangible capital employed, and suppose the average net tangible capital employed during that period was say, $5,000, so that interest on it would be $350. If I deduct that interest, or $350 form the $1,000 annual average profits, I would have a balance of $650. In such a case, if you want to
3960 find what sum of money would create or yield an annuity for $650, you would multiply the 650 approximately by 14. That would yield on the principal value then an annuity of 637 as against the 650 that you wanted to know about.

3962 Thursday, April 6, 1922. 2:00 P. M.

JAMES ANGUS STEVEN, resumed the stand for further cross-examination by Mr. Mayer:

I now produce the report from which Larson Exhibit 152 was copied by my stenographer. It consists of sheets marked by the stenographer 2 to 8, both inclusive, of

Larson Exhibit 154, for identification with the exception
(3379) that in the first draft of this memorandum, being Larson Exhibit 152, I notice that there were some errors that crept into it and that these were changed on that first memorandum and Larson Exhibit 152 written from that changed memorandum.

The first memorandum I have just referred to is not the one I testified had been destroyed. Larson Exhibit 152 was typewritten from a manuscript draft of my own. That manuscript draft is the one I have just identified
3963 as being sheets 2 to 8, part of Larson Exhibit 154 for identification. Sheet 2 is typewritten. It has a few
3964 pencil corrections which I made. Sheets 3 to 8, both inclusive, are all in lead pencil in my handwriting. Those sheets contain numerous corrections. There are many interlineations, but no erasures in them. I made those interlineations and corrections. Those sheets constitute the second report or memorandum prepared by me. The first was destroyed. That first memorandum or report
3965 was typewritten. I wrote in longhand all of this second memorandum or report except the first sheet, because I had not any stenographer available to dictate them, and it is a custom that I have in writing a report to write it in longhand first. I wrote out in longhand seven of the eight sheets in that report because it is usual with me. As to why the first sheet of this memorandum, being sheet number 2, is typewritten, I will say I think that was also manuscript unless for a very small part of it which I dictated.

The first memorandum or report which I prepared, and which I say was destroyed, was written in longhand. It was never dictated.

(3380) (Mr. Mayer offered in evidence the draft report con-
3966 sisting of sheets 2 to 8, both inclusive, of Larson Exhibit 154. Mr. Aldrich objected on the ground of immateriality and irrelevancy. Said sheets were received in evidence and marked "Admitted".)

(3881) My attention being drawn to sheet 8 of Larson Ex-
3967 hibit 154, I see there is an erasure on page 7, which I did not notice when I looked over it.

Referring to the working sheets that have now been marked Larson Exhibit 154, sheets 1 to 26, inclusive, the sheets which have now been numbered by the stenographer here from 2 to 8, both inclusive, bore numbers 1

to 7 before the stenographer marked them. Those numbers were put on by me. In other words, I myself numbered those sheets originally, and those numbers in each instance are one less than the stenographer has now numbered them.

I did not say that Larson Exhibit 152 was an exact copy of the manuscript notes. I said it was a copy of the manuscript notes with certain changes made thereon
3968 from the first draft, but they are only of a minor nature, and substantially this Larson Exhibit 152 is a copy of sheets 2 to 8, both inclusive, of Larson Exhibit 154.

I will make a search for the documents which I testified that my stenographer had, and which she copied as Larson Exhibit 152, but I am pretty certain it don't exist. I think it was destroyed.

I testified yesterday that Exhibit 152 was made by my stenographer on the typewriter. I also testified that she
3969 made it by merely copying sheets 2 to 8, both inclusive, of Larson Exhibit 154, but I made changes in that particular copy of a minor nature, and had it rewritten because I was not satisfied with it. I made changes in the copy that she made from the original draft. I did not make those changes on any part of sheets 2 to 8, on Exhibit 154. She must have had before her when
(3382) she typewrote Exhibit 152 some documents other than sheets 2 to 8 of Larson Exhibit 154. As to whether the document that she had must have been the third memorandum that I wrote out, I will say no, sir. I did not make the changes on the face of sheets 2 to 8 of Larson Exhibit 154 because I don't ever do that. That is not in accordance with the way in which my business is conducted. I don't ever make changes on the drafts I write out after they are once typed. I may have a draft report
3970 written four or five times if it does not please me, and I certainly don't keep the drafts from which the intervening drafts were made because a successful job, as I always tell my men, is not measured by the weight of the paper they bring back with them from the job but what is on those papers.

As to how many times my memoranda or reports were typed in this particular case, the case on hearing, I will say in the case of Larson Exhibit 152 there would be a typewritten memorandum made from my manuscript

copy. Possibly there was another one made in addition to that, only one page of which, page number 2, is a copy. But for all practical purposes you can take it as being the fact that from the manuscript copy prepared by me there was one typewritten copy which was altered in some minor respects after having been prepared by my stenographer before being finally rewritten. Those alterations will be at once apparent by a comparison of the manuscript copy with Larson Exhibit 152.

I cannot answer by number how many times I had my memoranda that I wrote out or any of them typed in this case now on hearing.

3971 The first thing I did in this case after I got certain conclusions was to write out some memorandum or report. Either the whole or a part of it was done in long-
(3383) hand. I cannot tell now what the fact was. I may have dictated some of it, but I think the chances are that I made it out in longhand. Speaking of that document as the first report or memorandum, it is not in existence. I think I made some corrections in that first memorandum, and had it rewritten or retyped. Of that Mr. Aldrich got a copy. The first memorandum or report that I prepared in this case I wrote out in longhand. I had it typed. Speaking of those two documents as the first longhand and the first typewritten report, neither of them
3973 is in existence. Neither of them were shown to Mr. Aldrich. The first report, I will say I wrote it out substantially in longhand, and to the best of my knowledge and belief I would write it in longhand. That first report was destroyed. The manuscript copy was shown
3974 to Mr. Aldrich. I made changes in that manuscript first copy. I did not make any changes in longhand on the first longhand document. My first memorandum was typed completely. That completely typed memorandum made from my original draft was the second document that was brought into being. I made changes in that second document in writing on the face. I did now show that second document at any time to Mr. Aldrich, either before or after I corrected it. I had the second document retyped. Calling that second document retyped as the third document, I did not make any changes in the third document. I destroyed that third document. I gave Mr. Aldrich a copy of it. The two prior documents were destroyed. I did not make any changes on this third

document, being the second type document. I wrote a completely new memorandum.

3975 Speaking of this new memorandum as the fourth document, the fourth document was written out in longhand (3384) by me, with the exception of page 1. That fourth 3976 document is pages 2 to 8 of Larson Exhibit 154. I made some changes on those sheets 2 to 8. Some at least are apparent on the face.

As to what was the next thing I did after I wrote out and corrected sheets 2 to 8, as they now appear, I will say I never made two operations of writing out and correcting sheets 2 to 4. Sheets 2 to 4 were written out and corrected as I went along. When I had finished writing sheet 8 the appearance of the sheets from 2 to 8, inclusive, were as they are now. The next thing I did with those sheets 2 to 8 was to turn them over to the stenographer to be copied, which she did. The copy which she then made is not Exhibit 152, I don't know where her copy of sheets 2 to 8 is. I have already said I would cause search to be made in the office and see if they exist, but I do not think they do.

3977 That was the fifth document. It was typed. I made changes in the fifth document. I did not show the fifth document to Mr. Aldrich before I changed it. I did not show it to him after I changed it. After I changed the fifth typewritten document I suppose it was turned over to the stenographer to have Exhibit 152 made out. I am sure that must have been done. My idea is that Exhibit 152 is supposed to be exactly like that fifth document. The changes that I have just said were made in that fifth document were made in longhand by me. I said a little while ago that I was not in the habit of making any changes excepting in my longhand work, and that I was in the habit of writing out my reports in longhand.

I gave Mr. Whitworth a copy of the first memorandum (3385) that I had prepared. I did not give anybody else a 3978 copy.

As to with what persons I conferred with reference to any of my reports or any of the work or any of the matters involved in the case on hearing, I will say as regards the first part of the question, my report, I discussed with Mr. Freeman, who has already testified in this case, the general outline which I intended to set up as my basis of the valuation of good will. I have during

the course of compiling the figures possibly discussed or talked over some matters with Mr. Whitworth or Mr. Vincent, but not for the sake of getting any information which is embodied in here with the exception of figures for computation purposes, and naturally as regards the
3979 second part of the question, I have talked to Mr. Aldrich from time to time.

Mr. Aldrich employed me in this case about two weeks ago as far as I can recollect. It was specified that I was to be remunerated on the regular per diem basis. That is, fifty dollars per day of eight hours for any work that had to be done, and $100 per day for court services.

I have not been paid anything on account. All the persons with whom I have discussed any of the matters pertaining to this suit are Mr. Freeman, Mr. Whitworth, Mr. Aldrich, Mr. Vincent, and I think Mr. Hagberg, if that's his name, of their office. I never met Mr. Aldrich before he retained me a few weeks ago. I first met him in his office. Mr. Whitworth asked me to go over.
3980 Mr. Whitworth did not tell me the nature of the suit at the time he asked me to see Mr. Aldrich. He did not tell me why I should see Mr. Aldrich. He gave me no information on the subject. The only conversation that
(3386) Withworth—and by the way, Vincent was also there, I remember now, at lunch with me in the Union League Club when the matter was broached. I was asked if I would testify in regard to certain matters of accounting principles in a certain suit in which their firm had been engaged.

When I went to Mr. Aldrich's office I knew why I was visiting him. I knew that if it was agreeable to Mr. Vincent that I should testify in regard to accounting principles in a certain suit in which Mr. Whitworth's firm was engaged, that I would then be told the name of the firm or companies engaged in the litigation, and it
3981 was then up to me to see whether I would withdraw or make arrangements for going on. I then spoke to Mr. Aldrich. Mr. Aldrich did not tell me specifically on what points he wanted my testimony. He must have told me in a general way because he came and gave me an outline of the history of the suit, and the various matters that were in controversy. I believe he told me he wanted my opinion specifically as to the value of the good will of the Wrigley Company. It is my understanding that

3982 was employed in this case to testify as to some matter besides the valuation of the Wrigley Company's good will. I understood that I was employed to testify on accounting principles generally. That is, any subject that would be brought up where accounting principles were involved. I did not understand that I was to give an opinion to Mr. Aldrich or on behalf of the Larson Company on any question other than the valuation of the good will of the Wrigley Company. It was not my understanding of my employment that I was to testify
3983 in this case on behalf of the Larson Company to my opinion as to the good will of the Wrigley Company. My understanding was that I was to testify, if necessary, if
(3387) called upon to do so, as to my opinion of the value of the good will of the Wrigley Company at certain dates, and other matters of accounting principles. One of those matters was depreciation. As to how, in my opinion,
3984 as an accountant where one concern buys out another concern in the same line of business, the cost of purchase be carried on the books of the purchaser, I will say the question is not specific for this reason: Purchases might include and would include purchases of capital assets such as real estate, machinery, equipment, office furniture and fixtures, and naturally they also would include purchases of raw materials in the case of a manufacturing concern for the manufacture of their finished product. In the former case, purchases of capital assets, those pur-
3985 chases would be carried at cost unless at some date subsequent to the purchase there had been an appraisal made by a recognized appraisal company, and the effect of any increase or decrease between the purchase valuation or the valuation at cost price and the appraised valuations was taken up in the books. In the latter case, as regards raw materials, if the goods have been bought in that particular fiscal year, they would be carried on the books of the company at cost; if the raw materials were on hand at the end of the fiscal year, and were carried over into the succeeding fiscal year, if the cost price was greater than the market price at the end of the fiscal year, the probability is that those goods would be reduced to cost values at that particular date, and that would be the value at which they would be carried on the books.

Suppose the Wrigley Company today should buy out

some concern that manufactures gum, for $50,000, $25,000
(3388) in cash and agrees to pay the other $25,000 next year, and suppose the assets so acquired consisted of trade marks, furniture, fixtures, machinery, merchandise, and the business of the concern, I will say the $50,000 should
3986 not be charged by the Wrigley Company to expense. It should be capitalized. That's the purchase price of the business. With regard to the $25,000 that was to be paid next year, I would set it up as a liability of the company at the date of purchase. If, instead of paying $25,000 in thirty or sixty days, the agreement was that they should pay the $25,000 in 1923, I would give no consideration to their expenditure of the $25,000 on account of the purchase of that business, and to the giving of their note, for $25,000, payable in 1923, unless it were an interest bearing note. If it were an interest bearing note, I would merely charge off the interest as an expense.
3987 If I was going to ascertain the profits of the Wrigley Company in 1923, and if I assumed that the Wrigley Company paid the note in 1923, I would say payment of the note would have no effect whatever on the profits of the Wrigley Company for the year 1923. When the payment was made it would be charged against the specific liability for $25,000 just the same as the payment of any other accounts payable for the purchase of merchandise would be charged against the particular shipper to whom the payment was made. So I would not take into consideration at all either of the two $25,000 payments in ascertaining the profits of the Wrigley Company for
(3389) 1922 or 1923.
3989 If the Wrigley Company, in 1922, promised to pay a competitor $10,000 a year for each of the next five years, beginning 1922, if he would stay out of a competing business, and in 1922 the Wrigley Company paid that competitor $10,000—in other words, assume that the whole liability of $50,000 was contracted in the year 1922, and $10,000 was only to be paid in 1922, and $10,000 in each of the four years following; and that the man had previously been in the chewing gum business, and had been actively engaged in it, and the Wrigley Company acquired his business, I would say in a case like that where the purchase is of a particular business, in which the vendor was engaged in, and his agreement to keep out of the business forms a part of the consideration paid

for the business, I would capitalize that investment. It
3991 would not be capitalized over any peroid, that is the cost price of the investment, and would remain as the cost of the particular investment or as the capital assets of the Wrigley Company.

On the first line of Exhibit 152 I say, "The value of the good will and other intangible asserts being inherent" and so forth. By the expression "other intangible assets" I refer to any other intangible assets such as trade names, patents, and manufacturing privileges, the company might have, such as promises of individuals to keep out of competition with them, and other assets of an intangible nature.

On page 2 of that report I say that a reasonable commercial return on the money invested in the tangible assets would be 8%. In arriving at my conclusion to use that rate, and in reaching the valuation of the good will
(3390) of the Wrigley Company as of November 12, 1918, I did not take into consideration any matters affecting the gum business that would be identified with the war. I don't know whether or not at any time during the accounting period, or at any time in the month of November, 1918, there were any conditions that were unusual or extraordinary, and which affected the gum business and were due to the war. My value as to the good will of a
3992 business would be influenced if the Government placed restrictions upon the procuring of the material necessary for the business.

I never heard of a Capital Issue Committee appointed and acting the war. I know that during the latter part of the war and for different periods there had been appointed and there was acting what is known as a Capital Issued Committee which prevented the issuance of securities unless they were for some Governmental or important public purpose. I did not take that into consideration at all in placing my value on the good will of the Wrigley Company.

I have heard that the United States Government controlled the price at which sugar could be dealt in in the United States during the war, but I have no authoritative information on that point. I have heard that there were regulations during the war affecting the quantity of sugar that could be procured by manufacturers, and that it was parceled out with certain limitations. I did not

pay any attention to any of those matters in determining the value of the good will of the business.

3994 As to whether, if there were such regulations or restrictions that could properly be taken into consideration in determining the value of the good will of the business,

(3391) I will say if the valuation of the good will was being made as of November 12, 1918, that feature of the case would be given particular consideration, having regard to the purpose for which the value was being made. If, as in the present instance, the valuation was being made as of November 12, 1918, in view of the fact that any such embargoes or disabilities under which the business

3995 was then laboring had since been removed, the question would have no effect in arriving at the value of the good will at November 12, 1918. The only effect that it would have would be to reduce the value of the good will at that date by reason of any hardship that the company was laboring under at the time of the embargo.

In placing my valuation on the good will of the Wrigley Company as of November 12, 1918, I did not take into consideration all of the facts and circumstances and business of the Wrigley Company since that date so far as I then knew. I ignored everything that happened since November 12, 1918, in coming to my conclusion as to the value of the good will as of that date. I took into consideration everything adverse to the value for the year 1918 as I knew it. I did not fix my valuation upon the Wrigley Company's good will as of November 12, 1918, based upon the rate that I thought was then ruling on loans.

3996 In considering what was a reasonably fair commercial return on the money invested in the tangible assets I would not say that it is the normal rate at which capital could be procured representing the whole of the net tangible assets at the date as of which the good will was to be valued.

Mr. Freeman, in the article already referred to, page 259, says:

(3392) "Having determined the profits of the business and the amount of the tangible investment, the question of the rate of initial return to be allowed on the investment must be considered. The proper rate would appear to be the normal rate at which capital could be secured representing the whole of the net tangible assets at the date as of which the good will is to be valued."

I cannot answer yes or no as to whether I agree with that statement. My understanding of reasonable, commercial return is something more than the rate of interest charged by banks for loans. I disagree as to the rate
3997 of interest or the sufficiency of the rate of interest mentioned by him. My understanding is that I am giving my
3998 opinion as to the value of the good will of the Wrigley business because of the possible residual value which may have accrued to the profits, which may have been added to the profits accruing from the sales of Doublemint over the accounting period. My idea is that I want to find the total good will according to the entire Wrigley business during a certain period of time, and then see what part of it arose through the business in the Doublemint gum. According to my understanding we are here now trying to find out what the value of that good will is, because of the possible addition of a proportion of that increase in value as between the beginning and end of the accounting period to the profits shown in the Touche-Niven account to have been earned on the sales of Doublemint on the gum during the accounting period.

It is not my understanding that somebody died, and that because of somebody's death the master here is trying to find out the value of Doublemint's interest in somebody's estate. It is not my understanding that the mas-
(3393) ter is trying to find out the value of the Wrigley Company's good will because a sale was going to take place of the business of the Wrigley Company. As to whether I know why an effort is being made to find out how much good will was earned by the Doublemint business during
4002 the accounting period, I will say because of the present inquiry into the accuracy or otherwise of the profits shown to have been earned in the Touche-Niven accounts during the accounting period on sales of Doublemint.

I have not testified that the question of good will does not affect the profits. I made calculations at all of the average investment in tangible assets of the Wrigley business for the entire period. It is on sheet 15 of Larson Exhibit No. 154. I have no reference on that sheet to the invested capital used in the Wrigley business
4003 from July 28, 1914, to January 1, 1915. When I said I made a calculation as to the average investment in tangible assets during the entire accounting period, I misunderstood the question. I made that calculation for

three years in ten and one-half months of the accounting period.

In preparing Larson Exhibit 152 I ignored entirely the entire business of the Wm. Wrigley Jr. Company from July 28, 1914, to January 1, 1915. My whole calculation in Larson Exhibit 152 is based on the theory that $1,500,000 of our net tangible capital should be excluded and treated as yielding only 6%.

The last column of page 5 of Exhibit 152 is entitled, "Average investment in tangible assists representing common stockholders' equity therein". I will tell everything that I included in arriving at the figures contained in that column.

(3394) The sum of the tangible assets minus the sum of the
4004 current liabilities represents the investment in net in the actual tangible assets. From that difference I deducted the preferred stockholders' equity amounting to a million and a half dollars in those tangible assets, the balance remaining representing the common stockholders' equity in the net tangible assets. Those net tangible assets and current liabilities—excuse me, take out the "net". Those tangible assets and the current liabilities referred to in my answer herein are those shown in the balance sheets at January 1, 1911, December 31, 1911, December 31, 1912, December 31, 1913, prepared
4055 by the Wrigley Company and forming part of the testimony in this case or the records in this case. The tangible assets at July 28, were ascertained in like manner, only I computed them myself from the balance sheet at the beginning of the year 1914 as furnished by the Wrigley Company.

On page 6 of Larson Exhibit 152 appears an item of $1,800,404.07. As to how I treated that item in connection with the tangible assets that appear in the last column of that same page 6, I will say appropriate deductions were made at the end of each period for the outstanding liabilities in respect of U. P. S. coupons which
4006 was calculated on the basis of 33-1/3% of the unredeemed coupons.

I did not add that item of $1,800,404.07 to the tangible assets in arriving at my figures on the last column of page 6.

On the last page of Exhibit 152 I purport to give the

capitalized value of the good will and ther intangible assets of the Wrigley Company at November 29, 1919.
(3395) Nothing in particular happened on that date on account of which I selected it. As a matter of fact, I built up a valuation on that sheet based upon what I say was the market value of $83.50 a share for the stock of the Wrigley Company on that date, and on that basis I claim that the capitalized value of the intangible assets at November 29, 1919, on the basis of the market value on November 29, 1919, was $30,900,000.

November 29, 1919, was one year and seventeen days
4007 after the end of the accounting period. I made inquiry to find out what the market price was of the Wrigley stock on other dates than November 29, 1919. Those dates were September 30th, October 31st, November 29th and December 31st, 1919. I did not select the date nearest to the close of the accounting period for the market price of the Wrigley stock because I wanted to show what the market price of the Wrigley stock was approximately one year later. I took one year rather than 11 months or 13 months for the reason that my understanding was that the issue of the new Wrigley stock, the 20,000 shares that were issued to the public, was sold in 1919 and ultimately found their way into the hands of the public, was made about September, sometime in September, 1919. I do not think the fairest thing to have done would be to have found out as what price that 20,000 shares of stock was sold.

4008 I found that on September 30th the bid price for the Wrigley stock was 77, and the asked price was 78. If I had used 78 for the market price of the Wrigley stock, it would have made a difference of about $2,200,000 in my valuation of the good will based on the market value. In other words, the value would have been much less than I
(3396) arrived at by taking the market value as of November 29, 1919.

I have never heard of a process of valuing good will
4009 by finding the average of the net profits for a given number of years and capitalizing that average at some definite rate of return.

I have seen the Marwick, Mitchell, Peat & Company report presented to the master, at Touche-Niven's office, but I never read any of it. I was never told as to any particular item it contains. I had never discussed any

matters pertaining to this case with L. P. Larson Jr.
4010 with Hoyt, Little & Company or with Little, Hoyt & Company, or Central Bond & Mortgage Company or anybody connected with the Central Bond & Mortgage Company.

Redirect Examination by Mr. Aldrich.

The copy of the earlier report which I handed to Mr. Aldrich, I handed to him in this room. Mr. Aldrich put that copy in his grip. I could not say whether Mr. Aldrich read or considered that report. I never saw him read it. I never had any talk with him about that report. I spoke to Mr. Aldrich the next morning about that report. The evening I gave Mr. Aldrich the report I got
4011 the information necessary to enable me to compute the value of the good will at the beginning of the accounting period from the balance sheets for the years 1911, 1912 and 1913 handed to Mr. Freeman by the Wrigley Company while we were in their offices at the time we were inspecting the advertising photographs available and submitted to us for inspection. Having that data so I
(3397) could make a comparison between the value of the good will at the beginning of the accounting period and at the end of the accounting period, I asked Mr. Aldrich to return me that copy. And Mr. Aldrich did it here in this room. Mr. Aldrich and I have never had any conversation or consultation of any kind or nature whatsoever with reference to the contents of that paper. Mr. Aldrich has never indicated to me whether or not he has read that paper or had any views concerning it. That paper was an attempt to arrive at the value of the good
4012 will of the Wrigley Company's business at the end of the accounting period without any knowledge as to what the good will was at the beginning of the accounting period and without the data which I obtained on that day that I handed it to Mr. Aldrich and for which reason I withdrew it the next morning. That withdrawal on my part of that copy which I requested Mr. Aldrich to return to me, was not in any way by reason of any criticism of views which Mr. Aldrich expressed concerning the paper. I never discussed the matter of any findings of mine with Mr. Aldrich or anyone else. I know that there has been a decree entered in this case under which this hearing is had. I un-

derstand that we are here proceeding under that decree.
4013 I know what the rates on loans were with bankers in November 1918. The rate was 6%. That was on commercial loans and loans with collateral security. In my opinion, if it was ascertained that the Government had restrictions upon the sale or amount that could be obtained by a purchaser engaged in manufacturing of the articles entering into his product, such restrictive regulations would be reflected in the profits of the business.
4014 I did not enter in to any speculation or guessing as to
(3398) what future government regulations would be made, either in the way of restrictions on material or in the way of tariff regulations.

I understood from Mr. Mayer's questions that there was a practice of the United States prescribing a formula
4014 for the ascertainment of the value of the good will as of March 1, 1913, and I said I knew of no such practice. I understood Mr. Mayer's question to imply that there was an article or a section of regulations 45 governing the
4015 matter. I have made an examination of regulations 45, and I found that there was not any such practice. As to whether or not I have found any regulations of the Treasury Department to that effect, I believe I have a copy of a memorandum issued by the Committee of Appeals and
4016 Reviews quoting the method of arriving at good will as quoted by Mr. Mayer this morning. I am referring to Montgomery's Tax Proceedure, 1922, pages 602 and 603 at the bottom. That refers to A R. M. 34, which I understand is that memorandum entered by the Committee on Appeals and Reviews which Mr. Mayer quoted to me, and which I understood was part of the regulations. Mr.
4017 Mayer never asked me about a memorandum issued by the Committee on Appeals and Reviews. I did not destroy the memorandum which was made by me or by my stenographer in the growth of Larson Exhibit 152 because there was a reason why Mr. Mayer should not see it or because I had a purpose of secreting anything. I never conferred with Mr. Aldrich nor showed Mr. Aldrich any memorandum that was destroyed, with the exception of the one which I gave into his possession for a day. In the conference I had with Mr. Aldrich when I came to his
(3399) office with Mr. Whitworth and Mr. Vincent, Mr. Aldrich did not express any desire or wish as to what the
4018 nature of my testimony should be. He indicated only

the subjects. Mr. Aldrich did not indicate any other desire than to prepare myself to testify concerning these subjects in accordance with my knowledge and information.

(Mr. Aldrich then stated to the witness that on his cross-examination he had been asked that if a manufacturer manufactured several products, upon one of which he sustained a loss, but the business as a whole was profitable and if he kept no separate account of losses in the unprofitable branch, whether it would not be true that in ascertaining the good will of the business and the value of the business he would ascertain the profits as a whole, or whether he would make a detailed examination as to each branch of the business. Mr. Mayer objected to the question on the ground that it was not redirect, but assumed something the witness was not asked about, and it was immaterial. The objection was overruled.)

4019 The witness continued:

In a computation of good will values it may be stated briefly that the good will value will be based on the profits of the business as a whole. That after all would represent the capitalized earning capacity of the business in excess of a reasonable return on the investment which is the basis on which all good will values in my opinion must be computed. If the instructions received at the time the computations were undertaken were for the purpose of assigning or apportioning a proportion of that good (3400) will value on the basis of the earnings shown by the different products manufactured, it would then be necessary to prepare operating statements showing the profits or losses resulting from the sales of these particular manufacturers. The results obtained from that procedure would, of course, be largely a matter of opinion. When it came to apportioning the administration, general and selling expenses over the different products it would be hard to say what proportion should more properly be borne by the different products other than that, inasmuch as they were being marketed by the same officers, the same selling forces sold all the products, the same clerks and 4020 office heads handled the accounting procedure necessary to all the sales, the only method on which these expenses could be apportioned would be on the basis of the ratio which the sales of the different products bore to the total sales. So that when it is said that the marketing of any

product results in a loss, in my opinion it must first be shown whether or not the cost of manufacturing that product is so excessive or so large a percentage of the selling value that there will be no margin left to meet any sales cost of general selling and administration expenses which must be apportioned to those sales.

But broadly, in the absence of instructions to an accountant to make an apportionment to the different branches of the business, the ascertainment of good will is dependent upon the profits of the entire business as a unit.

4022 I have not rendered any bill for any services to the Larson Company.

(Mr. Aldrich offered in evidence an article entitled
(3401) "Some Considerations involved in the valuation of good will" by Herbert C. Freeman in the Journal of Accountancy, Volume 32, October, 1921, Number 4, appearing at pages 247 to 264, inclusive. The master sustained an objection to the offer.)

4023 (The said article was offered but not received in evidence, was marked "Larson Exhibit 155," not Admitted.)

4024 I don't understand that Mr. Freeman, in the article which has just been identified, expressed an opinion contrary to the one which I expressed in answer to Mr. Mayer's question with respect to the return on reserve funds invested in gilt edged securities.

4028 April 12, 1922, 10:30 o'clock A. M.

(It appeared that Mr. Aldrich had previously made a motion with respect to taking the testimony of certain witnesses at Rochester, New York and St. Petersburg, Florida, and that the master had denied the motion in a statement, which the master had read into the record on February 16, 1922.

(3402) It also appeared that pursuant to a notice given by
4028 the L. P. Larson Jr. Company's counsel on May 19, 1914, to the Wm. Wrigley Jr. Company's then counsel in the suit of Wm. Wrigley Jr. Company against L. P. Larson Jr. Company, et al., No. 30563 in this court, Mr. Aldrich took depositions of certain witnesses in June, 1914, who testified to the origin and history of Pulver's Spearmint gum and Di-Gesto Spearmint gum and their packages and the ownership thereof.

Mr. Aldrich stated that he was not stisfied with said disposition and that he wanted the whole record as then made to be embodied in the certificate which he was going to ask the master to certify to the court so that Mr. Aldrich could submit to the court the question of the admissibility of the evidence. He stated that in that certificate he wanted the various certified copies of the bills filed in behalf of the Wrigley Company, some of which he said had been filed after the settlement of the Pulver matter and the termination of the Pulver litigation. Mr. Aldrich
4029 stated that he would ask the master to embody in the same certificate further matters to which he would refer during the court of the session, concerning which he sought to have testimony taken.

Mr. Aldrich said he wished to take the testimony of
(3403) witnesses at St. Petersburg, Florida and Rochester,
4029 New York, who had been witnesses by deposition in the present case before Judge Anderson, and in the litigation between the Wrigley Company and Pulver, and also the testimony of Pulver, for the purpose of showing that rep-
4030 resentatives of the Wm. Wrigley Jr. Company, employed for the purpose of laying the foundation for the filing of a bill of review in the present case, did in the year 1919, at Rochester and St. Petersburg, seek by offers of money and other things of value to induce such witnesses and said Pulver to sign statements recanting or modifying the statements made by the persons approached as witnesses when testifying in said causes above named with reference to the date and prior use of the dress and color scheme and packages made and sold by said Pulver, the said agents well knowing that the statements sought from said witnesses were false and that the testimony given in said causes by said several persons was true in all respects.

Mr. Aldrich further stated that the L. P. Larson Jr. Company asked the master to hold court, at a day to be fixed by the master, at some convenient place at Rochester, New York, to hear the evidence indicated, and
4031 also at St. Petersburg, Florida, for the same purpose; that he was advised and proposed to prove that the operatives or agents engaged in this work reported to attorneys for the Wrigley Company in Chicago, and that he understood that the master had decided to exclude the evidence.

Mr. Aldrich then said that he did not wish it to be inferred from his statement that Mr. Lane had any reports or information concerning the subject matter, but that he was advised that Mr. Mayer's firm were the attorneys to whom the reports were made. Mr. Mayer then asked Mr. Aldrich whether he was advised that reports were made
(3404) to Mr. Mayer's firm of these alleged misconducts or
4031 attempts of misconduct Mr. Aldrich said he did not know what these agents reported to Mr. Mayer; that he only said the operatives were under instructions, as he was
4032 advised, from Mr. Mayer; that he did not have any information on the subject as to what the instructions were or that Mr. Mayer had ordered them to make any of the offers to which Mr. Aldrich referred. Mr. Mayer then asked Mr. Aldrich if he has any information that any of those alleged efforts at suborning witnesses were reported to Mr. Mayer and Mr. Aldrich then said that he couldn't say that he had any information that any of the alleged efforts at suborning witnesses, to which Mr. Aldrich had referred, were reported to Mr. Mayer; that he had the statement of one witness who said that inducements were made of employment by the Wrigley Company, and that there were telegrams sent to attorneys of the Wrigley Company in Chicago; that said witness did not name Mr. Mayer in said statement.

The master then asked Mr. Aldrich whether the offer he was making and the request that the master go to St. Petersburg and Rochester covered the same matters that were up on the previous occasion when the master excluded the evidence. Mr. Aldrich answered that the offer covered the same matter so far as going to Rochester and St. Petersburg was concerned; that he did not want his answer in the affirmative to cover the offer that he had made at the prior hearing with reference to the certified copies of bills commenced by the Wrigley Company against various named defendants in other jurisdictions. The master then referred to one of these prior bills filed by *Wm. Wrigley Jr. Company* v. *The Toledo Chewing Gum Company* in an Ohio Federal District Court in 1915 and stated that he had ruled it out in the belief that it had no
4033 connection whatever with the present case, as the defendant in that case, so far as the master knew, was in no way connected, remotely or otherwise, with any of the parties to this suit. Mr. Aldrich then stated that he was

(3405) offering the bill for the purpose of showing that there
4033 were some untrue statements therein, relating to a package that was involved in that case in the hearing of the main case, and that it had no other connection whatever with this case, and that his aim was to show other instances of wanton and aggressive and unethical conduct on the part of Wm. Wrigley Jr. Company, and that the same was true of the subsequent offers made on February 16 of other bills and orders entered against other defendants in which the Wm. Wrigley Jr. Company was the
4034 complainant in each instance. The master stated that he saw no reason to change the ruling made when the offers were first made.

April 12, 1922, 2 o'clock P. M.

4035 CHARLES G. BUCK, a witness produced on behalf of the L. P. Larson Jr. Company, being first duly sworn, testified on direct examination by Mr. Aldrich:

My name is Charles G. Buck. I live at 820 South Wabash Avenue. I am engaged in the printing business. I
4036 was engaged in the printing business in 1911 and 1912, and up to the time of the outbreak of the late war.

(Mr. Lane objected to taking the testimony of Mr. Buck on the ground that from statements of Mr. Aldrich it appeared that the testimony related to the same matter upon which the master had already sustained an objection as to its materiality, relevancy and competency. The
4037 master said he didn't know what the witness was going to testify about, and, therefore, the objection was overruled.)

Prior to the war my printing establishment was at 102 North Franklin Street, Chicago. I was acquainted with
(3406) Mr. Larson. My first job of printing for him was dur-
4037 ing the year 1911. I am the same Mr. Buck who was referred to in Mr. Larson's testimony as having printed the
4038 temporary Wintermint label. I was in Company A, 304 Battalion, American Tank Corps. I returned to this country in May 1919. I received a special delivery letter from the Hunter Detective Agency requesting me to call. I have made a search for that letter and I have not been
4039 able to find it.

(Mr. Aldrich then asked the witness to state whether or not he went to the Hunter Detective Agency. Mr. Mayer objected unless some connection be made. The objection was overruled.)

I went to the Hunter Detective Agency. I met the clerks and they took me in and introduced me to a Mr. Hunter, a stout gentleman, oldish. Mr. Hunter asked
4040 me if I knew Mr. Larson and if I had ever done any printing for him, and then he asked me if I would mind going with him over to see Mr. Isaac Mayer, and we went down LaSalle Street to the Continental and Commercial Bank Building and up to Mr. Mayer's office together. When we got to Mr. Mayer's office Mr. Hunter introduced me to Mr. Mayer, and Mr. Mayer shook hands with me, Mr. Isaac Mayer, and he took me around to show me his office and his big library, the suite of rooms they had there, and then we sat down and we talked. He showed me his son's picture that was setting on the desk, whom he said was in the aviation service, and asked me what part of the service I was in; and then after a little preliminary talk he opened up his book, Mr. Isaac Mayer did, and read to me the testimony that took place in the Larson gum case referring to the printing of the Wintermint labels and he wanted to know if I had printed those labels.
4041 "I told him I had, and he asked me if it was not in 1916 (3407) that I printed them. I told him no, it was in 1913, and
4041 he said he didn't want anything but the truth and the whole truth," and then he wanted to know if I knew Mr. Larson as early as that, and he asked me repeatedly if I was sure that I knew Mr. Larson before 1916, and I told him that I knew Mr. Larson when he was in the Commercial National Bank Building; that that was three, four or five years prior to that; "and he asked me if I remembered, if I had any books or papers that would verify the date that I printed those labels or that I did any printing for Mr. Larson and I said, "Certainly, I have records that would show the printing of other orders far earlier than 1916, although many of the books were lost while I was in the service." And "Mr. Hunter wanted to know if I would devote any of my time to hunting these records, if I was paid for my time, and I told him he was welcome to any of the records I had without any compensation;" and then he told me about a man who had done some investigating work for him, a printer. I think Mr. Hunter

asked me while I was there in the office, in Mr. Mayer's
4042 presence. Mr. Hunter said this man, after he got through the investigating work, they had secured him a position where he was now drawing $10,000 a year, steady work; and then they asked me if there was anything I knew that would establish the date that they believed was right, and I told them no. As to whether what they had done for this other man who was making $10,000 a year was referred to more than once during the course of the conversation, I will say it was referred to several times. I could not say which party referred to it.

(Mr. Aldrich then asked the witness what was said about the Larson Company or Mr. Aldrich, if anything. Mr. Mayer objected on the ground that it appeared that the supposed conversation had reference to some matter not referred to the master, and also that it was with refer-
4043 ence to a matter concerning which the Larson Company (3408) had a motion pending to exclude. Upon Mr. Aldrich's
4043 statement that the testimony related to the case before
4044 the master, the master stated that he would take the testimony subject to the objection.)

4045 The witness continued: They said the Larson Company was a very small proposition and didn't amount to anything anyway, and they said Mr. Aldrich was an irresponsible lawyer, a bankrupt and not of any standing whatever.

"Mr. Mayer: I object to his giving any conclusions.

The Master: No, just confine yourself to what was said.

Mr. Aldrich: Q. You may state whether either Mr. Mayer or Mr. Hunter repeatedly or at any time made the statement that you had not in fact known Larson prior to 1916.

Mr. Lane: Objected to as leading and suggestive of the answer sought.

The Master: Objection sustained. The witness has not been exhausted yet.

Mr. Aldrich: Q. State whether or not anything was said to the effect that you had not been acquainted with Mr. Larson prior to 1916?

Mr. Lane: The same objection.

The Master: Objection sustained.

Mr. Aldrich: Q. State what, if anything, was said as

to the time when you became acquainted with Mr. Larson.

Mr. Lane: The same objection.

4046 The Master: Overruled.

A. Yes, that was the ——

The Master: You have answered it.

A. Yes, sir.

Mr. Aldrich: Q. What was said?

A. Why, Mr. Hunter asked me if I could show anything definite on my books that I had done printing for Mr. Larson previous to 1916, and he continually referred to it that I had not. He told me I surely had not done printing before 1916, previous to that, at least half a dozen times, Mr. Hunter did, and Mr. Mayer said it once or twice."

(3409) *Cross-Examination by Mr. Mayer.*

4046 I live at 820 South Wabash Avenue. I have lived there a year and a half. I was in the army one year previous
4047 to that. I am forty-two years old. When I went into the army I lived in Glendora, Michigan. I never lived in Glendora continuously. I just went there Saturday nights, over Sunday. I was living at the same place, the Y. M. C. A., when I went into the army. That is where I stayed nights. That is 820 South Wabash Avenue. I think I began to live at the Y. M. C. A. in 1914. I am still living at 820 South Wabash Avenue, and have been from
4048 1914 to the present time, excepting for one year while I was in service. That is the Young Men's Christian Association. I could not say what time in 1914 I went there; probably in June, I would say.

(3410) As to whether I went up to Mr. Hunter's office voluntarily, I will say it was in response to a letter. As to whether I went up willingly, the letter didn't state, just merely asked me to call. I had no knowledge of what the business was whatever when I answered the letter. I was in Mr. Hunter's office three times. I cannot give the dates of those visits; only they occurred in June, I believe—all in June, 1919. I am not sure; I think it
4049 was 1919—six weeks or so after my discharge from the army. The date of my discharge was May 20, 1919. I called at Mr. Hunter's office at least once after I had been at Mr. Mayer's office. I was at Mr. Mayer's office

once. As to whether I called at Mr. Hunter's office twice afterwards, I will say I am not certain that that is right. I believe it was only once. I only met Mr. Mayer once and that is the time that I have described. I would call Mr. Mayer's office a great big office, from what was showed me, the biggest one I ever saw. The first room I went into when I went into the office was the reception
4050 room. From there I went into Mr. Mayer's room. As to whether that reception room was rather a large room with a considerable number of books in it, I would say not nearly so many as in the library. I could not say that it looked like rather a large library of itself. I don't remember that when I went through the reception room to go into Mr. Mayer's room I had to pass a long hallway. There was either a long hallway or else there was connecting doors from one room to the other, because I went through them all directly. I went through four or five rooms. I remember going into the library very distinctly. I should judge the library was about eighty feet from Mr. Mayer's room. It was some considerable distance.

(3411) Mr. Mayer: "Q. Now, you say that when you were
4050 introduced to me you were told that we wanted to get from you solely the truth?

4051 A. No, I didn't say that.

Q. Didn't you say that? Didn't you say, 'We want nothing but the truth and the whole truth?'

A. No. I said you wanted to establish the date, that I didn't know Mr. Larson until the year 1916.

Q. You understood, didn't you, that Mr. Hunter and myself were both anxious to have you find your records from which you could tell exactly when you first did any business for Mr. Larson?

A. No, I didn't understand that.

Q. You did not?

A. No.

Q. Did you look up the books and records that Mr. Hunter asked you to look up?

A. I don't remember as I did."

I was not paid anything by Mr. Hunter in cash, but in the promises I have told about. I understood if I would
4052 sell myself, I would be taken care of by the Wrigley Company. As to whether he told me how much I would get or what kind of a position I would get, I will say I

understood it would equal this man's. Mr. Hunter said he and the Wrigley Company had secured a man who had done investigating for them and witnesses for them, who was a printer also, a position that paid him now $10,000 a year. He did not tell me what that printer had done for the Wrigley Company or for Mr. Hunter. He did not tell the details. I understood he had done some investigating and testifying. Mr. Hunter said this man did investigating work and had given testimony for some purpose. He did not give me the details.

Mr. Mayer: "Q. Well, did Mr. Hunter ask you, or (3412) did I ask you, to make any investigation in connection 4053 with this matter or this case or in connection with any matter?

A. Yes."

As to what Mr. Hunter or Mr. Mayer asked me to investigate, aside from looking up my records, I will say,—asked me to testify or asked me to show that I had not done any printing for Mr. Larson previous to the year 1916; that that was the first time that I ever did any printing of any description for Mr. Larson.

"Mr. Mayer: Q. You were asked in that connection, were you not, to examine your records so that the exact date could be procured and that if you would hunt for the records your time would be paid for, and you said that you would not want any pay for your time? Is that not what the conversation was?

A. Repeat that again.

(The question was read.)

A. No, that was not it.

Q. You have answered it.

Mr. Aldrich: If you want to answer further, and the witness seemed to be about to do so, he has a right to do it, I think.

Mr. Mayer: It is cross-examination.

The Master: I don't think he has a right to go ahead and tell what he did say when he has not been asked for that. I think his answer is complete."

(3413) "Mr. Mayer: Q. Mr. Buck, you were asked, were 4054 you not, to hunt up your records?

A. No.

Q. You were not asked?

A. No. I was asked—

Q. You have answered that question now. Did any-

body say to you that if you would hunt up your records, your time would be paid for? Yes or no, please.

A. No.

Q. Were you asked by Mr. Hunter or myself whether you had any books or documents to show the precise date when you first printed anything for the Larson Company or Mr. Larson?

A. No."

(3414) The first time I called on Mr. Hunter I stayed in his office fifteen minutes. I have already said that I never met Mr. Mayer but once and that was in Mr. Mayer's office. That is the truth. I don't remember how long after that first visit at Mr. Hunter's office, I visited his
4055 office the second time. He called me up and I don't remember whether it was two or three days afterwards that he asked me to come in again. On the second visit I stayed probably five minutes. I do not remember visiting Mr. Hunter a third time. I think I only met him once after calling at Mr. Mayer's office with him. I called at Mr. Hunter's office again when he called me up, either
4056 two or three days after being at Mr. Mayer's office, and I went there.

"Mr. Mayer: Q. Did Mr. Hunter ever ask you at any time if you could show him any definite record that you had indicating that you had done some printing for Larson before 1916?

A. State that question again.

(The question was read.)

A. No.

Q. Did I ever ask you such a question?

A. No.

Q. Will you tell the Master everything that was said between you and Mr. Hunter when you were in his office the second time?

A. I have no recollection otherwise than he asked—he probably asked me again if I had done any printing for Mr. Larson previous to 1916; that is the whole thing he sent for me for.

(3415) Q. And did he ask you the same thing at your first
4056 talk with him in his office?

A. Yes.

Q. And did I ask you the same thing when you met me?

A. Yes.

Q. And did you understand when you had your first talk with Mr. Hunter at his office, that that was all he wanted to find out from you?

A. Yes, that was all."

(3416) Mr. Hunter didn't tell me about somebody who was
4057 getting $10,000 from the Wrigley Company who had
4058 done some investigating. Mr. Hunter said this man had been placed where he was now getting $10,000 a year. Mr. Hunter told me that in Mr. Mayer's office. It was only told to me once. I don't say it was Mr. Hunter who told me. It was told up in the office. As to whether I remember whether that was told by Mr. Hunter while I was waiting outside in the waiting room and before I had seen Mr. Mayer, or whether I don't recall the exact place where that statement was made, I will say I believe it was made in Mr. Mayer's office. I know it was told after we arrived in Mr. Mayer's office. Mr. Hunter and I left
4059 Mr. Mayer's office together. I am prepared to say that Mr. Hunter didn't tell me that before I got into Mr. Mayer's office. Mr. Mayer didn't leave his office at any time after I came into it and while Mr. Hunter and I were there. Mr. Mayer was not called out of the room. I was in Mr. Mayer's room twenty-five minutes. No one was there but Mr. Hunter, Mr. Mayer and myself. I was not given any information as to who the printer was who was given this $10,000 a year position. I was given information as to what that printer had done on account of which he was given such a position. I was told the
4060 printer had done investigating and testifying in a case that Mr. Wrigley was interested in, I mean the Wrigley Company. The name of the case was not given. The nature of his testimony was not told. The nature of his investigation was disclosed to me. I was told he had investigated infringement work, people who had infringed,
(3417) done infringement on some rights. I was not told
4060 that that printer had done some testifying for the Wrigley Company in its litigation with the Larson Company. I was not given information as to the nature of the position which that printer was given, only it was a permanent salaried position of $10,000 a year. It was not specified that the position was with the Wrigley Company.
4061 The company he worked with was not specified. The statement regarding the $10,000 position was referred to more than once; I think it was referred to twice. I

could not say who referred to it first and who the second time. I did not say anything on that subject either to Mr. Hunter or to Mr. Mayer. I was not influenced at all by what was told me regarding this printer who was given a $10,000 a year position. I didn't consider I was in that class. I don't think I was ever asked to testify in this case previous to that time by anyone. As to whether Mr. Hunter asked me, while in Mr. Mayer's office, to testify to anything that I believed to be false, I will say I was not asked to testify by anyone directly. I was never asked outright by anyone on behalf of the Wrigley Company to be a witness in this case; only by
4062 inference. I was indirectly asked to testify as a witness for the Wrigley Company. I put that interpretation upon what was told me. I interpreted the reference to the $10,000 a year position given to a man as an effort to buy my character. I put that interpretation on it at the time. I understood absolutely that Mr. Hunter's conversation in Mr. Mayer's office and Mr. Mayer's conversation with me was intended to have me swear to something that I knew was false.

(3418) Mr. Mayer: "Q. You didn't say or do anything
4062 to indicate that you were insulted, did you? Yes or no, please. Why do you hesitate?

A. I was recalling the incident.

Q. Is it not fresh in your mind, or did it happen so long ago you are not quite sure of all the details?

A. Why, I have a better memory than the average person.

Q. Now, will you answer the question, please? Did
4063 you say or do anything to either Mr. Hunter or to me to indicate that you were insulted by the reference to the $10,000 a year job?

A. There was nothing decisive said or done at that time.

Q. By you?

A. By anyone.

Q. Nothing said or done at any time—

A. Decisive.

Q. —as to what you say as to making any improper suggestion to you; is that it?

Mr. Aldrich: That is not his answer.

The Master: Read his answer.

(The record was read.)

Mr. Mayer: Q. Well, then, in view of this interruption, I will put another question, Mr. Buck. You called at the office of Mr. Hunter after you had been at my office, did you not?

A. I believed I called in response to another telephone message.

Q. Yes. Now, I am asking you whether anything had happened at my office that insulted you? Yes or no, please.

A. Certainly.

(3419) "Mr. Mayer: Q. You were then insulted in my
4063 office, were you?

A. Why, the whole—

Q. Yes or no, please.

A. I was asked—

4064 Q. Can't you say yes or no to that question?

Mr. Mayer: I will ask the Master to direct the witness to answer the question yes or no.

The Master: No. If you define just what you mean by "insulted", perhaps he can answer it.

Mr. Mayer: The witness has not indicated any lack of understanding of my question.

The Master: Well, you can answer it, but I don't think you are bound to answer it yes or no.

Mr. Aldrich: Read the question.

(The question was read.)

Mr. Mayer: I will put another question.

Q. When was it that you were told that the Larson Company was a small proposition and that Mr. Aldrich
(3420) was a bankrupt and an irresponsible lawyer of no standing? Was that when you were at Mr. Hunter's office the first time or the second time?

A. I could not say."

I had no interviews with Mr. Hunter at his office. The
4065 interview was in Mr. Mayer's office. I never talked to Mr. Hunter or his office except that he asked me to go over to Mr. Mayer's office. The first time I was in Mr. Hunter's office, I was probably ten minutes waiting in the waiting room for him. When I visited him the second time, I was not with him over two or three minutes.

Mr. Mayer: "Q. Can you tell the exact words that were used in telling you that Mr. Aldrich was a bankrupt and an irresponsible lawyer of no standing?

A. No. Words to the effect that you have just stated was all; that is as near as I can tell.

Q. Well, I would like to have you state it in your own way, as you remember it.

A. Will the reporter kindly read it?

Q. No. No. I would like to have you tell it from your own independent recollection.

A. It is in there now.

Q. Yes. You are not unwilling, are you, to tell me what words were used on that subject, so near as you recall them?

A. Well, I can repeat them as I said them before a few minutes ago.

4066 Q. Well, just what were they?

A. Mr. Aldrich was an irresponsible lawyer and had been through bankruptcy; and did you ask any more?"

(3421) That is all I recall was told me about Mr. Aldrich.
4066 I could not say for certain whether it was Mr. Mayer or Mr. Hunter gave me the information. I was told the Larson Company was a very small firm and never made any headway in business. I could not say who told me that.

Mr. Mayer: "Q. Can you tell where you were when that was told you?

A. I believe it was in your office.

Q. Now, you say you believe. Have you now a sufficiently independent recollection of it that you would be willing to swear to it, Mr. Buck?

A. No."

(3422) I can distinguish what took place at any of those
4067 separate occasions. I have a very good memory and I can tell all the details that have any consequence. I was in Mr. Mayer's office twenty-five minutes. When I was
4068 in Mr. Mayer's office with Mr. Hunter, Mr. Mayer gave me quite a long talk about his boy being in the aviation. I have already told that. At the meeting in Mr. Mayer's office, Mr. Mayer read six or seven pages of the Larson testimony in the Wrigley case to me. Mr. Larson was one of the testifiers whose testimony he referred to. I don't recall who the other one might have been. Mr. Hunter asked me what I expected to earn my livelihood at after coming out of the service, if I was open for any situations. I told him I didn't know yet whether I would resume business or take a job. I am quite sure that Mr.

Mayer said something to me about one of his sons being in the aviation. He showed me his photograph in a case on Mr. Mayer's desk. My recollection is that it was a photograph of someone in uniform. My recollection as
4069 to that is not just as good as my recollection as to this $10,000 a year man. I was not interested in the boy especially. As to whether I was specially interested in the $10,000 a year man, it seemed an unusual incident to me, to be told me under the circumstances. I interpreted it as a bribe. As to whether I said to Mr. Hunter or to Mr. Mayer that I so interpreted it, I gave them no answer one way or the other. As to whether there was any definite proposition made to me offering me any position
4070 or anything like that, I will say the only definite proposition was the similarity of the cases, my case and this other printer's. It was not that we were both printers. It was that we were both desirable witnesses.

(3423) Mr. Mayer: "Q. Did you ever look for any of your
4070 books or records to ascertain when you first did any printing for Larson or the Larson Company?

A. I don't recall looking for any.

Q. Did you ever say anything to Mr. Hunter to the effect that you had looked for your books?

A. I don't recall doing so.

Q. Didn't you, after you had been at my office, go back to Mr. Hunter's office and report to him that you had looked for your books and could not find them, your books or records?

• • • • • •

4071 A. No."

I did not report anything to Mr. Hunter at the second visit to his office. I went there in response to a telephone call. At that visit he asked me if I was dead sure again that I had done any printing for Mr. Larson previous to 1916, and asked me how I knew, and I said, "Well, I
4072 knew from the time I started to do printing for Mr. Larson, when he signed his lease on Clinton Street in 1911". I believe that ended the conversation. I never heard from Mr. Hunter again that I recall. I didn't make any memorandum of any of the conversations that I had with either Mr. Hunter or Mr. Mayer.

The first person with whom I talked about the talks I had with Mr. Hunter and Mr. Mayer was some member

of my family. The next person was Mr. Pottinger, a friend of mine.

I am not married. I said something about having a child at Glendora, Michigan. My mother is living. I do not live with her. I am divorced. I am in the printing
4073 business at 1029 South Wabash Avenue. The name of
(3424) the concern is Wabash Printing Service. I am one of the owners. Mr. A. H. Blair is interested in this business with me. I have had the place at 1029 South Wabash Avenue for three years, or rather one year coming May first. That is, I have been there since May 1, 1921.

4074 My wife, Mrs. Buck, was the member of my family with whom I first talked about my talks with Mr. Hunter and Mr. Mayer. That was in June, 1919. That talk with Mrs. Buck was on Kenmore Avenue, up north, where we were residing. I have forgotten the number. I was only there a week or so. That was directly after I got out of the service. My wife and I separated a few months after that; a few weeks; something like that. I don't know
4075 where she lives. The second person was Mr. Pottinger. His full name is W. H. Pottinger. He is retired from business. He recently moved out in Woodlawn, and I have forgotten his number. I spoke to him in August, 1919. I mentioned my talks with Mr. Hunter and Mr. Mayer to a number of friends after that. I could not give you the succession that I did so.

Mr. Mayer: "Q. When did you first mention it to L. P. Larson?

A. I don't recall mentioning it to him any definite time; I don't know as I ever had any definite time to mention it to him.

Q. You mean you never have, in fact, mentioned it to him; that is what you mean, is it not?

A. Well, not my talking to him.

The Master: Not what?

A. I don't remember mentioning it to him any definite time.

(3425) "Mr. Mayer: Q. Did you ever mention it to him?
4076 A. Yes.

Q. When for the first time?

A. Oh, probably in 1920 sometime.

Q. Where?

A. I could not say.

Q. Who was present?

A. I could not say that anyone was present.

Q. What business were you in at the time you mentioned it to Larson in 1920?

A. I could not say whether I had opened my shop or not; I may have been employed; I have always been a printer; I may have been doing printing work for somebody else.

Q. Are you doing any printing for the Larson Company now?

A. I do a little rush work for them occasionally. I have a small plant and turn out a little order now and then, probably I have done a hundred dollars for them in the last year.

Q. You haven't a large shop, have you?

A. No, I have not a large shop; I have a very small shop."

I first came to Chicago in 1892. I was born in Cheboy-
4077 gan, Michigan. I was ten years old when I left Cheboygan. I left Cheboygan for Ypsilanti, Michigan. I was there several years. I don't remember whether it was two, three or four years. I moved to Chicago in 1892, or it may have been 1893 or 1894; it was quite a while ago. I was then about fourteen years old. I went to school about ten years. I was not twenty-two years old when I quit school. I was about fourteen or fifteen. I quit going to school when I left Ypsilanti. I was working from the time I came to Chicago in 1892 and have
4078 worked ever since. I was with Montgomery Ward two years. Next I was with W. F. Hall one year. Then I
(3426) was over in Michigan on a farm for two years—near
4078 Cheboygan, Michigan. Then I returned to Chicago. The year I return to Chicago was probably 1897. Then I worked for the Cudahy Packing Company about a half a year, and I went into a co-operative company at St. Anne, Illinois for one year; and then I came back to Chicago and was in the brokerage business in the printing line; and I was in my own shop. That brokerage business was at 2204 Michigan Avenue. I was there six
4079 years. That would be about 1908, I guess; that is, I was there from 1902 until 1908. For one year I had a partner. His name was H. W. Nelson. After I quit the brokerage business in 1908, I opened my own shop at 413 Wabash Avenue, under my own name. It was a printing

shop. That was in 1908. I was there three years. As to whether that was from 1908 until 1911, it was two years, 1910. I then sold out and opened a shop again after a one-year interval or six months. I rested a while; I don't know whether it was six months or a year. I opened a shop at 102 North Franklin Street under the name Charles G. Buck Printing Company. Sometimes
4080 I used Buck Printing Company and sometimes Charles G. Buck. I opened that about 1910, between 1910 and 1911. I was there up to 1918, when I joined the army. I think it was May 20, 1918 that I joined the army. It was in May, 1921 I came out of the army. It must have been May, 1919. The first thing I did when I came out of the army, was to work for the Triple Printing Company for three weeks. Their place is about 24 West Kinzie Street. After that I went back to brokerage printing; that is, taking printing orders on a brokerage basis. My office
4081 was at 1236 South Wabash or 1136 South Wabash. I was in that business until I opened my shop again, about six months, I guess. I opened my shop again October 1 at 744 South Wabash Avenue. I was there eighteen (3427) months, until May 1, 1921. On May 1, 1921 I moved
4081 the shop and business to 1029 Wabash Avenue. At the time I first told Larson anything about these talks that I say I had with Mr. Hunter or Mr. Mayer, I was in business for myself at 744 Wabash Avenue. While I was in the printing brokerage business, I did not do any business with, or for the L. P. Larson, Jr. Company, or Mr. Larson. As to what was the occasion of my seeing Mr. Larson at the time when I told him about these talks with
4082 Mr. Hunter and Mr. Mayer, I will say, undoubtedly it was in regard to printing some little postal cards. I was not soliciting business at that time. I never solicited any business, because Mr. Larson, if he needed any little thing, he would call up our office on the telephone. It would probably be correct to say that I think I was calling on him in 1920 to talk to him about some order I had theretofore received from him. At that time I told Mr. Larson I had received propositions from the Wrigley Company. As to whether I got any business from Larson after that talk, I will say "I have not had anything more than, as I stated before, about a hundred dollars or so every year." I had printing orders from him before I reported my talks with Mr. Hunter, and I have had

orders from Mr. Larson since I reported those talks with
4083 Mr. Hunter. I have told Charles H. Aldrich something with respect to these talks that I say I had with Mr. Hunter. The first time I told Mr. Aldrich was probably three months ago. As to whether I ever made any memorandum in writing as to what those talks with Hunter were, I will say I never had any talks with Hunter.

(3428) Mr. Mayer: "Q. Did you ever make any memo-
4083 randum in writing as to what those talks with Hunter were?

A. I never had any talks with Hunter.

Q. Did you ever give Mr. Aldrich anything in writing showing or purporting to show what took place between you and Hunter?

A. There never anything took place between Mr. Hunter and I.

Q. I am referring to this conversation that you, Hunter and I had together.

A. I never had any with Mr. Hunter. All conversations were had with you and Mr. Hunter jointly."

(3429) I never put in writing or dictated to a stenographer
4083 what conversation took place between Mr. Hunter, Mr. Mayer and myself. No notes or memoranda were made of what the talk was. As to whether I kept telling it around from time to time, beginning with my wife, and then Mr. Pottinger, and then some other of my friends, and then Mr. Larson and others, I will say I did not do
4084 it promiscuously. It is not correct to say I told it only where I thought it would do some good. I think I met Mr. Aldrich sometime within the last year. It was the early part of the year. It was previous to 1922. Mr. Larson introduced me to Mr. Aldrich. I don't know whether Mr. Larson introduced me to Mr. Aldrich at that time for the purpose of my testifying in this case. It may have been with regard to some of my own matters that I had up. As to what the nature of my own matters that I had up with Mr. Aldrich was, I will say I just asked him if he knew of any good attorney that was accustomed to handling domestic cases. I don't remember
4085 whether Mr. Larson was present at that time. Mr. Aldrich referred me to George Haight. I conferred with George Haight and Mr. Haight tried to get me a divorce. The divorce was not secured through Mr. Haight's ef-

forts. It was through Mr. Maloney's efforts. I think Mr. Haight gave me a bill for $75.00.

(Mr. Mayer then asked the witness whether he had paid the bill. Mr. Aldrich objected. Mr. Mayer drew attention to the fact that Mr. Haight is an attorney in this case, but the objection was sustained.)

4087 Mr. Daniel S. Wentworth introduced me to Attorney Maloney. Mr. Mayer was the first person who talked to me with respect to my being a witness in this case. Mr. Hunter was the next person. As to who was the next person, there were no other persons. Mr. Hunter and Mr. Mayer were the only two persons who ever spoke to me with regard to my being a witness in the matter in (3430) which I am now testifying. I was not subpoenaed to 4087 appear here and testify before Master Morrison, who is presiding here now. My answer with respect to my being a witness in this matter referred to the Wrigley proposition. I understood from what Mr. Hunter and Mr. Mayer told me that there was some litigation pending between the Larson Company and the Wrigley Company.

4088 As to whether I understood from what I was told by either Mr. Hunter or Mr. Mayer that the Larson Company had a suit pending against the Wrigley Company for damages on account of the Wrigley Company having gotten an injunction against the Larson Company, I will say I knew of that suit. I knew of that suit before I went into the army. I first heard of that suit from Mr. Charles T. Frantz.

(Mr. Mayer then put the following question to the witness:

"Well then, when Mr. Hunter first talked to you in about June, 1919, you understood, did you not, from either what you had already known, or from what he then told you, that he wanted to find out from you when you first printed labels for the Larson Company, and wanted you as a witness in that suit that Larson had pending against the Wrigley Company?"

The witness answered:

"I understood that when I went up to Mr. Mayer's office, Mr. Mayer and Mr. Hunter told me." I did not 4089 understand when Mr. Mayer or Mr. Hunter talked to me, that Mr. Larson had a suit pending against the Wrigley Company for a million or a million and a half dollars damages, and that Mr. Hunter or Mr. Mayer were trying

to find out the exact date when certain labels were printed for Larson or the Larson Company. I did not understand that Mr. Hunter and Mr. Mayer were trying to find out on what date I first began to do printing for Larson or his company.

(Mr. Mayer put the following question to the witness:
(3431) "You knew, did you not, when you were in my office
4089 that Larson had a suit pending against the Wrigley Company of the kind I have described, to recover a million or a million and a half dollars damages because of Larson's claim that Wrigley had wrongfully enjoined Larson?"

The witness continued:)

I knew of no amount, only that there was a suit pending, that is, a damage suit by Larson against the Wrigley Company. As to whether it was my understanding
4090 that Mr. Hunter wanted to get me to testify as a witness in that case, I will say I can't say yes or no to that. I can say what my understanding was, but yes or no would not mean anything. I did not know and had not heard from either Mr. Hunter or Mr. Mayer, or from anybody else, of any other case than the one Mr. Mayer has just described. It may have been three, four, five or six months ago that I first got any notice from Mr. Larson or his company or Mr. Aldrich, or any information that they would call me as a witness in this case, or wanted to call me as a witness in this case in which I am now testifying. Mr. Larson was the first person that said anything to me about my testifying to the matters that I
4091 have sworn to today. That talk may have occurred over the 'phone. I don't remember. I don't remember as anything else was talked about at that time. Mr. Larson told me that the Wrigley crowd had been after some of his witnesses and he wanted to know what they had told me, and that was about all. I had already told him in 1920 what had been told me by Mr. Hunter and Mr. Mayer. As to whether he was asking me to repeat what I had already told him, I will say, "probably." That would be my recollection, that he asked me to repeat what
4092 I had already told him. My best recollection is that that was over the telephone. I told Mr. Larson I would be willing to state the facts as I knew them. He told me he
(3432) might want me to. I could not say as to whether at
4092 that time I had met Mr. Aldrich. I could not say

whether it was the first time I met Mr. Aldrich that I asked him to recommend or whether he knew some lawyer that was good in domestic matters. The first time I met Mr. Aldrich the only other matters we talked about were general subjects. I don't think at that first talk with Mr. Aldrich there was anything said about any of the matters that I have testified to here today. The first
4093 time I met Mr. Aldrich, Mr. Larson introduced me. I was with Mr. Larson one day and we met him and he introduced me to him. I could not say where that was. It may have been on the street. At that time I was talking about nothing in particular with Mr. Larson and Mr. Aldrich. There was no reference that I recall made to any of the matters to which I have testified here today. I have been in Mr. Aldrich's office. The first time that I was in Mr. Aldrich's office was the time that I talked about my domestic matters. As to how long after that first visit to his office I visited him the second time, or
4094 met him again, I would say only very recently. The next time I met Mr. Aldrich was in his office. The second meeting in his office was two or three months ago. I went there at the request of Mr. Larson. I went there alone, I think. I don't think anyone else was present. I then talked about the matters I have testified to here. Mr. Aldrich told me at that time he might want me as a witness. I told him I would be willing to come and testify any time he wanted, and I told him I would tell what experience I had had in the case.

Redirect Examination by Mr. Aldrich.

(Mr. Aldrich put the following question to the witness:
(3433) "You have been interrogated about an action at law
4094 in which Mr. Larson is assumed to have brought an action against Mr. Wrigley for a million or a million and a half dollars damages. You may state whether or not the
4095 case in which Mr. Mayer and Mr. Hunter talked with you, as you have testified here today, was one in which they read, or Mr. Mayer read Mr. Larson's testimony?"

Mr. Mayer objected to the question on the ground that it did not call for a conversation, but for the witness' conclusions, and was also not proper redirect, and that it was leading and suggestive. The objection was overruled. The witness answered in the affirmative. Mr.

Aldrich then said that no testimony has ever been taken in the law action and that the Wintermint label and Buck's printing of it is not involved in the law action at all.

"Mr. Aldrich: Q. Now, about meeting me, Mr. Buck: As I recall it, the first time I ever met you,—and I do this only to refresh your recollection,—you came in uniform into this court, soon after you came out of the service,
4096 and was introduced to me by Mr. Larson, did you not?"

Mr. Mayer's objection that the question was leading was overruled, and the witness continued:

Yes, I met Mr. Aldrich here. I recall meeting Mr. Aldrich and Judge Landis to whom Mr. Aldrich introduced me.

"Mr. Aldrich: Q. Now, afterwards, as you have stated, you came to me to inquire something about your domestic trouble? I referred you to George Haight, did I not?

4097 A. Yes, sir.

Q. I did not go and introduce you to Mr. Haight, did I?

A. No, sir.

Q. I gave you a card of introduction, didn't I? Do you recall that?

A. You just gave me his room, I believe."

(3434) April 14, 1922

4098 10:30 A. M.

Mr. Mayer referred to the statement Mr. Aldrich had made the day before with reference to the proceedings before the Master on February 16, 1922 and stated that he wanted the record to show, and he thought the Master would recall that he (Mr. Mayer) had stated in open court that the statements theretofore made in the record by the Master as to what took place on February 16, 1922 did not fairly condense the proceeding; that he, Mr. Mayer, had objected to the condensed statement and had told the Master that he desired the Master to insert in lieu of the statement the full proceedings of February 16, 1922.

4099 The Master then stated that a few days after he had made said statement for the record, counsel for both parties had expressed dissatisfaction with the condensa-

tion of the said proceedings on February 16, 1922 by the Master and that he had told said counsel then or later announced that if said condensation was not satisfactory to both parties that he would insert in the transcript the entire proceedings and thereupon he proceeded to do so.

4100 PROCEEDINGS OF FEBRUARY 16, 1922

(10:30 A. M.)

INSERTED BY THE MASTER ON APRIL 14, 1922.

Mr. Aldrich said that Mr. Mayer had stated that he had made a number of investigations relating to matters connected with this case since he was retained therein and that he wished to ask Mr. Mayer upon the record whether he or his client caused to be made an investigation with
4101 reference to the Pulver package. Mr. Mayer replied:

"I was retained first in a suit you brought for the L. P.
(3435) Larson Jr. Company against Wm. Wrigley Jr. Company for, I think, $1,500,000 damages which is still pending in this court, in which you claimed that the Wm. Wrigley Jr. Company, knowing that a man named Pulver was the originator of a certain mark, falsely represented to the District Court of the United States sitting here that the Wrigley Company was the originator thereof, and by knowingly swearing falsely imposed upon the Federal Court so as to enjoin Larson from using a certain mark.

At the time I was retained it looked as though that action, which was one at law, might be reached very rapidly. I investigated the pleadings in that case. I investigated some of the testimony given on the hearing before Judge Anderson of the case, one branch of which is now before the master. I caused certain investigations to be made preparatory to defending that action at law.

I requested an investigator to ascertain if he could when Pulver first introduced the package referred to, to what extent he had used it and the history of its use. I, of course, am referring to the package which it was claimed that Pulver was using. I have from time to time also sought to investigate matters involved in the refer-

ence to the master. Those matters covered an investiga-
4102 tion of facts having no relation to the package used by Pulver."

Mr. Aldrich then moved to strike out all of Mr. Mayer's answer except that portion thereof which stated that he caused an investigation to be made with reference to the package that he claims to have used. Mr. Mayer said that the language used in Mr. Aldrich's question referred to the present case; that an investigation made in some other litigation had no bearing upon the matter before
(3436) the master. There was nothing in Mr. Aldrich's question connected with the matter which had been referred to the master and that he wanted the record to show that he regarded the question as wholly improper, irrelevant and immaterial. The master said that he couldn't see
4103 that the matter brought up by Mr. Aldrich had anything to do with the matters that he had been directed to hear as a master. Mr. Aldrich stated that he would undertake to connect the matter up,—that he wanted to simply establish the fact that the Wrigley Company made this investigation, and it may all be stricken out if he did not connect it. Mr. Mayer then objected to proceeding with any fishing expedition and said he believed that the examination was an effort to find out information which the Wrigley Company had procured in another case, under Mr. Aldrich's promise that they would make it appear material, and Mr. Mayer submitted that it was within the Master's discretion to have the materiality appear first. Mr. Aldrich then said that he does not wish to procure any information which the Wrigley Company has, but that he wishes simply to establish the fact that the Wrigley Company had made, as stated by Mr. Mayer, an investigation into the history of the Pulver package, and that he would connect it up in such a way that the Master and court would see the materiality of it. Mr. Lane then said he could not see why Mr. Aldrich should
4104 ask for material which, if discovered, was with reference to another matter.

"Mr. Aldrich: It is not with reference to another matter, it is with reference to matters involved in this case.

Mr. Mayer: Do you say that the history of the Pulver package is a matter for this master to pass on, or is still open?

Mr. Aldrich: No, I do not. I say it is not."

(3437) The master then stated that he failed to see that the matter under consideration had anything to do with the
4105 matters that had been referred to him. Mr. Aldrich then said that he wanted it in the record and that he wanted Mr. Mayer to answer and that if the master compelled him to, he would tell what he proposed to prove. Mr. Lane objected on the ground of incompetency, immaterially and irrelevancy and that the matter had no bearing on the issues. The master sustained the objection, stating that if Mr. Aldrich wanted to make a record of it he could produce the proof whatever it was and it would become a part of the proceedings that could be written up for use by either of the parties thereafter.

Mr. Aldrich stated that he proposed to take proof on
(3438) certain matters connected with this litigation and that he was going to ask the master to take the proof. The master stated that he would sustain the objection and that the question of taking proof, if it arose at all, would arise when Mr. Aldrich offered the proof; that the Master couldn't pass in advance on that. Mr. Aldrich said that he wanted to ask Mr. Mayer certain questions before the master struck the proceedings out. Mr. Aldrich then asked Mr. Mayer whether he had made an in-
4106 vestigation at Rochester, New York. Mr. Mayer declined to answer the question on the grounds of irrelevancy, impertinency and immateriality, saying that the question was part of a fishing expedition and that it had no bearing upon any issue in the case, that it called for privileged information and was contrary to the ruling of the master. Mr. Lane also stated that the objec-
4107 tion was not made on the ground that Mr. Mayer was being asked the question instead of Mr. Cox. Mr. Aldrich then stated that he wished to show upon the record that the purported investigation was made at Rochester,
4108 New York, and elsewhere in the spring and summer of 1919 by investigators who made their reports to Mr. Mayer and that in the prosecution of such investigation offers of bribery were made to numerous witnesses for affidavits which were false as to fact.

Mr. Mayer then asked Mr. Aldrich if he was offering to prove that either Mr. Lane or Mr. Mayer had any knowledge of such alleged offers. Mr. Aldrich said that he didn't know whether Mr. Mayer or Mr. Lane had knowledge of that; that he (Mr. Aldrich) had the written statement of one witness who said that telegrams

were sent to Mr. Mayer and answers received from Mr.
(3439) Mayer.

4108 "Mr. Mayer: Do you say on your professional word that you are offering to prove before the master that either Mr. Lane or myself authorized any such alleged offers of bribery or had any knowledge of their being made?"

Mr. Aldrich: I have no proof that you authorized it and Mr. Lane is not connected, so far as I have written documents on the subject, with such investigation, that his (Mr. Aldrich's) position was that if the Wrigley Company's investigators made offers for that kind of testimony, it made no difference whether Mr. Mayer
4109 knew it or not. Mr. Mayer then stated that if improper overtures of bribery were made by someone without authority, it would not be binding upon the Wrigley Company, and that an offer to bribe a witness in some other case would not have anything to do with the present case and that he wanted to say to the master that Mr. Aldrich did not pretend to have any evidence that any one who is or was expected to be a witness in the case on hearing was improperly approached and that Mr. Aldrich did not pretend that if there was any effort made to corrupt a witness in the case before the master that such effort was made by anyone authorized to do so by the Wrigley Company or its counsel, or by anyone in authority, or that anything was done by the Wm. Wrigley Jr. Company or any of its counsel or any one authorized to act for it which was improper. Mr. Mayer then asked Mr. Aldrich to produce the telegrams to which he has referred as a matter of fairness. Mr. Aldrich replied that he didn't say that he had any tele-
4110 grams; that he had said that he had a statement saying that after the terms were proposed that telegrams were
(3440) sent to Mr. Mayer as to the proposition. Mr. Mayer then said that he did not believe that Mr. Aldrich has or ever saw such a telegram, whereupon Mr. Aldrich said he did not and Mr. Mayer then replied:

"I want to say I am perfectly willing to have Mr. Aldrich put the question to me as to whether such telegram ever went to me and I will not object to answering the question."

(3441) "On the contrary, if counsel want to make that issue, I will now tender myself as a witness before the

master for the purpose of stating under oath what I now state, namely, that so far as I have any knowledge, information or belief, no one connected with the Wm. Wrigley Jr. Company or authorized to act for it, ever directly, or indirectly sought to corrupt any witness, either in the case now on hearing, or any other case, and that so far as I am personally concerned I never directly, or indirectly heard of any such effort having been made; that I never directly, or indirectly knew of such an offer being made; that I never directly, or indirectly authorized or connived at any improper efforts being made to influence any witness in the case on hearing, or any other case; that I have no reason to believe
4111 or suspect that any such effort was made; and that to the best of my knonwledge, information and belief no such effort was made directly, or indirectly to any one supposed to be a witness in the case on hearing; and that if anybody will swear that any such effort was made, either in connection with this litigation or any other litigation to which the Wm. Wrigley Jr. Company is a party, that such effort, if made, was made by some one on his own personal, individual, responsibility without any knowledge, instructions, acquiescence, consent, approval, confirmation, or information, directly or indirectly on my part. I cannot use language, if Your Honor please, strong enough to cover every possible situation that can be conceived. In other words, in the statement
(3442) that I am making it is my desire to deny as broadly and as unequivocally as the English language can convey that, first, no such thing as Mr. Aldrich says occurred, did take place; second, that if it did take place, it was done without any knowledge, connivance, information, confirmation, request, or suggestion, directly or indirectly, at any time or under any circumstances, on my part, or on the part of anybody else authorized to act for or on behalf of the Wm. Wrigley Jr. Company.

Now, if there is any combination of circumstances that have gone through Your Honor's mind that have not oc-
4112 curred to me which might exist and still not have been covered by my denial, I hope Your Honor will suggest it. I am willing to testify voluntarily to every word I have just made in my statement, if the master thinks a situation has arisen where it would be proper; and

again, before I quit my statement, so that there can be no misunderstanding, I deny in toto that any genuine telegram can be shown sent by me, or with my knowledge or under my directions, or with my acquiescence or concurrence, which in the slightest degree can be connected with, I mean honestly connected with any improper effort to influence the testimony of a witness ever in the case now on hearing, or in any other case."

Mr. Lane then made a statement that he assumed that he had been informed fully concerning every matter that had transpired in the case and especially those which related to the Wm. Wrigley Jr. Company's affairs and the conduct of its case; that the first intimation he
(3443) had ever had at any time that any such investigation was being made was when Mr. Aldrich made mention
4113 of it; that he had no connection with, no cognizance of, nor any information concerning any investigation of Pulver's affairs, or of any of the situations concerning his previous business or relations with the Wrigley Company relative thereto, except as shown in the record in the case on hearing.

4114 Mr. Mayer then stated that he thought Mr. Aldrich should be forced by the Master to state to whom he claims a telegram was sent by Mr. Mayer and when, so that if there was such a telegram it may be presented; that it is not a question with Mr. Mayer as to whether what Mr. Aldrich said was stated by him under oath or not, but that Mr. Aldrich has made a statement which was taken stenographically; that Mr. Mayer knew that statement to be false and untrue, as he stated in detail, and that the master ought not to permit Mr. Aldrich to have such a statement as he made of record appear without his producing the telegram to which Mr. Aldrich said reference was made in some statement made by someone whose name was not disclosed; that under the
4115 circumstances Mr. Aldrich should be compelled either to withdraw his statement or produce the telegrams which he says are referred to in this unknown statement made by some unknown person. Mr. Mayer further stated that he stood ready to testify to the truthfulness of everything in his past statements with regard to his knowledge on the subject, and that if he did testify he would testify in absolutely the same manner.

(3444) Mr. Lane moved to strike out the whole matter as

4117 incompetent, immaterial and irrelevant and as having no bearing whatever on the issues of the case and at the same time stated that he didn't think there was any necessity for Mr. Mayer making any statement under oath. Mr. Aldrich then made the following statement: "Of course, I
4118 have no personal knowledge with reference to this matter, but in 1919 my attention was called to it first by a telegram from George F. Hickson who was Mr. Pulver's attorney, who said he had information with regard to matters that were of importance to the Larson Company, and asked if he could see me if he came here. I advised him he could and when he came he came with Mr. Frank F. Pulver. They stated that an investigation had been carried on by a number of operatives in Rochester, New
(3445) York, into the history of the Pulver package and that offers of rewards to witnesses, if they would make affi-
4119 davits to the effect that Pulver never used that package until early in 1908, had been made. They gave me the names of some of the people to whom such an offer had been made. Mr. Pulver also stated that a gentleman visited him at St. Petersburg, Florida, who cultivated his acquaintance and stated that Pulver ought to have an addition to the Detroit Hotel of from one hundred to two hundred rooms, that Pulver had answered him that he desired that and would get to it as fast as he could, or words to that effect, that the man asked him whether he was a hotel man or a gum man and Pulver told him he had been in the gum business. He said that this operative, as he turned out to be, stated that, after discussion, that he—when Pulver called him to terms by asking whether he was interested in the gum business or hotel business, he said that there was no use as between two such men as they were to be misunderstood or conceal the situation, that he had been investigating the history of the Pulver package and that he had got the evidence as he thought that showed that Pulver had not used the particular package that had been involved in the Wrigley and Pulver litigation until the beginning of 1908 and Your Honor will recollect that Mr. Pulver had testified in this case that he had used it from 1891. He said that if he
4120 would sign a statement to the effect that he had been mistaken in his dates, the money would be furnished him to put one hundred additional rooms on the Detroit Hotel, that Mr. Pulver declined to make any such statement and

left at once for Rochester, that led to the sending of the telegram to me and their coming to visit us. I told Mr. Hickson to make an investigation in Rochester and Mr. Hickson has sent me statements of what witnesses say
(3446) of approaches made while this investigation was going on. I never, of course, saw telegrams, I have only got the representtions of Mr. Pulver and Mr. Hickson on the subject and the result of statements of witnesses as Mr Hickson has sent them to me."

4121 Mr. Aldrich also said "I have made no attack on Mr. Mayer. I wanted the opportunity of putting this evidence in for what it is worth. It is met by a denial. It may be that the denial is right. Now, one witness says that a certain operative whose name he gives exchanged telegrams with Mr. Mayer. I have not the telegrams, it is a matter of investigation."

Mr. Aldrich also said that the evidence is competent because if a party is guilty of such conduct all disputed questions are resolved against him. Mr. Mayer then said that he is not disputing that if anybody on behalf of the Wrigley Company undertook to influence any testimony in the case on hearing the opposite side would have a right to show it and that nothing which either he or Mr. Lane said is to be taken as the slightest intimation that either of them has any different opinion or that either of them is seeking to keep out of this record a full opportunity to make proof of that type, but that it now appears from Mr. Aldrich's statement that even if everything which he says is true regardless of the fact that his state-
4122 ment is hearsay only and assuming that some one connected with the Wrigley Company having authority to do so had made that improper overture, it would not be material unless Mr. Aldrich says and he has stated to the contrary that the date when Pulver first began to use his label is material to the matter before the Master or is an open question. Mr. Aldrich then said that the matter
4124 was not connected with the other case at all. The information he had from his investigators was that the investigators for the Wrigley Company told the different
(3447) people that there was litigation on in Chicago between
4125 the Larson Company and the Wrigley Company and that they wanted to get this evidence, that the testimony given in the Pulver case before was erroneous and they wanted to change the dates offered considerations.

The Master stated that he would sustain the objection to the question and that he would sustain Mr. Lane's motion to strike out. Mr. Aldrich then said that he wanted a copy of the record written up and that he was going to follow this matter up further. The Master then said that he wanted to put the matter in such shape that either side could take it before the court and that is why he ruled on both these questions, and the Master further said that he
4126 understood that so much of Mr. Aldrich's request as applied to going to Rochester and St. Petersburg to take testimony related to alleged corrupt practices of the Wrigley Company or its representatives; that it was not plain that it took place in connection with the trial on
(3448) hearing but in other cases in which the Wrigley Company was a party but in which the Larson Company was not a party. He asked Mr. Aldrich whether he (the Master) was correct in that understanding. Mr. Aldrich stated the master was not correct, that the contrary was expressly stated as he had put it upon the record. The master then asked Mr. Aldrich if the practices and methods that he complains of were in the case that was on hearing. Mr. Aldrich stated that he claimed on the record "that it was in this controversy between Larson and Wrigley and was with a view of laying the foundation of filing a bill of review in this identical case," as he (Mr. Aldrich) was advised.

Mr. Lane then asked Mr. Aldrich whether he had any testimony on that and Mr. Aldrich replied that he did not have any knowledge directly and personally except what
4127 his people who had advised him told him what had taken place; that he had no personal knowledge about it, was not there and had never interviewed the witnesses except Mr. Hickson and Mr. Pulver when they were in Chicago.

Mr. Aldrich then stated that the five bills, certified copies of records which he had filed, were inter alias the Wrigley Company and other defendants, but that the matters at St. Petersburg and Rochester were not between other parties.

(3449) "Mr. Mayer: Do you claim, Mr. Aldrich, that this
4127 alleged wrong doing was with respect to any matter that has been referred to Master Morrison or with respect to any matter that is still open before him?

Mr. Aldrich: I do not say that it is, your Honor. I could not say that it is. I say that it has reference to mat-

ters that may affect the rights as between the L. P. Larson Jr. Company on one side and Wm. Wrigley Jr. Company on the other.

The Master: Would it affect the master's report or the court's decree in this case?

4128 Mr. Mayer: Based on the master's report.

Mr. Aldrich: That depends, if the court please, upon this question, and I don't wish to argue it at length at all, but I understand the rule to be that, even in an accounting, if such practices are shown to prevail, questions of doubt are resolved against a wrong doer of that character and that the rule has been so established by the Supreme Court of the United States.

Mr. Lane: If that's true then, all the Larson testimony which we were taking and restrained from further taking would be pertinent to this issue as it affects the credibility of Larson and the validity of his claim."

(3450) Proceedings of April 14, 1922 were then continued.

4128 Mr. Lane stated that on the previous hearing the Master had ruled adversely to Mr. Aldrich's offer of the certified bills referred to in the proceedings of February 16, 1922 and had also ruled adversely to Mr. Aldrich upon the other matters involved at that hearing with respect to taking the testimony of the witnesses at Rochester and St. Petersburg.

4129 Mr. Aldrich stated that he had no hesitancy in saying that the master had so ruled adversely. The master thereupon said that he would decline to go either to Rochester or to St. Petersburg to take the testimony suggested by counsel for the Larson Company, that he had too much doubt of its admissibility to do so, that he assumed that the matter might be presented to the court and if the court regarded it as testimony that the master under this reference should take, he would of course be glad to take it.

(3451) Mr. Aldrich then asked the master to hold a hearing in New York City City at such time and place as he might see fit to take the deposition of Antoinette Jackson who was on December 10, 1915 a court reporter in the United States District Court for the Southern District of Ohio, Western Division, and who made a report of Mr. Offield's opening statement in the case of *Wm. Wrigley Jr. Company* v. *The Helmet Company*, in which report

4130 Mr. Aldrich proposed to show that Mr. Offield had stated

to the court on page 6 that the Wrigley package and color scheme had been before Judge Day on one or two occasions, and that Mr. Offield at the same time had stated:

"Two injunctions have been granted by Judge Cochran. One injunction was granted by Judge Killettee in this district. In the Grove case in New York Judge Hough granted an injunction. It has been before Judge Carpenter, who sustained the rights of this complainant. That was sustained by the Court of Appeals. The decisions of Judge Day, Judge Cochran and Judge Carpenter I have here. I have the decision in the Grove case also."

That Mr. Offield had further stated on page 16:

"The Grove case went to the Circuit Court of Appeals; the Larson case was upon a full hearing before Judge Carpenter.

The Court: Did you appear in all those cases?

Mr. Offield: I appeared in all."

Mr. Aldrich stated that Mr. Offield had appeared in that
(3452) case for the Wm. Wrigley Jr. Company against the
4130 Helmet Company, and that the Court of Appeals affirmed
4131 Judge Hough in the Grove case only in part and reversed him in part, and that Mr. Offield in the original case misled the court by filing a copy of the overruled decision and used it in obtaining a preliminary injunction and not upon any full hearing in this case.

"Mr. Mayer: Do you claim, Mr. Aldrich, that the proof which you are asking the master to take in New York, by way of the deposition of Antoinette Jackson, has anythink to do with any matter that has been referred to this master here, or as to any matter that is open before the master here?

Mr. Aldrich: It is my belief and understanding that other acts of wantonness or aggression, or other acts of misrepresentation in courts, even as between other parties, may be proven against the Wrigley Company in this case at any stage of the proceedings and that towards a defendant of that character all questions of doubt must be resolved against a litigant of that character."

4132 The Master said that he declined to go to New York to take said testimony unless the court should so direct
(3453) him. Mr. Aldrich said that he took it that all the matters where the master had so declined would be embraced in one certificate. The master said they might be so em-

braced unless counsel could agree to take the matter up on the entire record.

Mr. Aldrich thereupon asked the Master to dispose of his motion which appears of record to strike out "all the
4133 Larson testimony" and Mr. Mayer insisted that parts thereof were material and the Master said "I will sustain
4134 the motion so far as it relates to any matter covered by the decision of the Circuit Court of Appeals in this case."

(3454) Friday, April 14, 1922. 2:00 P. M.

4135 (Mr. Aldrich renewed his motion of September 23, 1921, that the court's accountants be instructed as to the law applicable to the questions involved in the litigation, and that the accountants be required to file their report under the terms of the decree and made up under the master's instructions from the books and records of the Wrigley Company.

4136 Mr. Aldrich stated that the motion has no reference whatever to the partial report of Marwick, Mitchell, Peat & Company and which was taken out at the time after the Gledhill incident when the Larson Company had permission for Touche, Niven & Company to examine the books of the Wrigley Company.

4137 Mr. Aldrich waived on the record the master's giving Mr. Hall any instructions whatsoever, and withdrew any request so far as it pertains to definite propositions of law. He said his motion now went to the point that he thought he should have an opportunity to examine Mr. Hall as a part of his case, if he chose to do so. The Master
(3455) then said that Mr. Aldrich certainly should have that opportunity and Mr. Mayer said he was not objecting to it.

4138 Mr. Aldrich said that he had repeatedly stated on the record and advised the master that so far as he knew, the figures in the Marwick, Mitchell report were found to be accurate. And Mr. Aldrich asked the Master if that was not true and the Master replied in the affirmative.

(3456) The master said that he would not change his ruling
4138 that he made when this motion was made before; that he assumes that the accountant Mr. Hall will prepare himself to furnish any information from the books of the Wrigley Company that either side desires; that the master believes that so far Mr. Hall has been requested to examine

the books and to ascertain certain facts and that he has done so and presented a report covering every request that has been made of him, and that the master assumes
4139 that Mr. Hall is ready and willing to make any further examination that either side may desire; that the master did not think he, the master, should be called upon to participate in making a report that would be final and binding until all of the evidence is in.

(3457) The matter as to whether the Wrigley Company
4140 should be required to pay back to the Larson Company the amount paid by the Larson Company to Marwick, Mitchell, Peat & Company on account of Gledhill's work came up. After argument, the master ruled that the Larson Company was not entitled to have the money refunded to it at that time. There also came on to be heard the further question as to whether the Larson Company should be required to pay Marwick, Mitchell, Peat & Company's two bills, one dated February 24, 1920, for services rendered from July 1, 1919, to the date of said bill as follows:

4141 Mr. Hall, 4 days at $50,	$200.00
Mr. Gledhill, 70½ days at $25	1,762.50
Comptometer operator, 18 days at $15,	270.00
	$2,232.50

the other dated August 5, 1920, for typing Gledhill's report of information taken by him from the Wrigley books and records on written requests for such information by counsel for the Larson Company, $652.00.

4142-45 The master stated some facts bearing on the last question that did not appear in the transcript. It appeared from this statement that the master at the time of the Gledhill incident had been informed by Mr. Hall that it would take about ten days for Gledhill to complete his unfinished work, and that Mr. Aldrich had agreed with the master that Gledhill should be permitted to com-
(3458) plete his work; that it was clearly understood between
4143 Mr. Hall, Mr. Gledhill, Mr. Aldrich and the Master that Gledhill's work could be completed within ten days; that sometime in the fall at a chance meeting Mr. Hall told the Master that Gledhill was working on the Wrigley matter; that it was then supposed that a hearing would soon be held before the master, but it was not held until January

4144 7, 1920; that thereafter, on February 25, 1920, the master received a bill of $2,232.50 from Mr. Hall, from which it appeared that Gledhill had spent 70½ days on the work. It was understood he could finish in ten days. That thereafter the master took up the question with Mr. Aldrich in which Mr. Aldrich questioned the right of Marwick, Mitchell, Peat & Company to be paid for Gledhill's work, especially beyond the time in which he said he would complete it, but the master told Mr. Aldrich that he did not think the bill should be paid at that time; that he wanted to know whether Gledhill's work was accurately done before the bill was paid. That after Gledhill completed his report and turned it over to Mr. Hall, the latter notified the Master that it was completed and in lead pencil sheets,
4145 and that it would cost between seven and eight hundred dollars to type it; that the Master notified counsel for the Larson Company of such estimated cost and was directed to have Marwick, Mitchell Peat & Company type the report which was done at a cost of $652 as shown by the above bill; that the typed report was delivered to the Master on June 29, 1920, and copies furnished to counsel on both sides and on August 18, 1920, the Master sent the $652 bill to Larson Company's counsel; that on May 5,
3459 1920, Touche, Niven & Company, a firm of accountants,
4145 was authorized to examine the books and records of the Wrigley Company on behalf of the Larson Company and the Gledhill report was turned over to them for examination and use in preparing their report, and it was tested by them, and found to be honestly made and accurate. Thereafter, on April 15, 1922, Mr. Hall was asked to make a statement concerning Mr. Gledhill's work. Mr.
4146 Hall stated that he took Gledhill off the Wrigley work on July 3rd and put him on another engagement which he was on until the end of September when Mr. Gledhill advised Mr. Hall that he had accepted an offer from a client and was going to leave Mr. Hall's services; that Mr. Hall then inquired of Gledhill how long it would take to finish the Wrigley work and he said it should not take very long and we had in mind probably ten days; that Gledhill began on the Wrigley work on September 29th and worked until October 7th when he had to go back on the previous engagement which was connected with some war claims and desired attendance at Washington; that this carried the matter over until October 27th when

Gledhill began again in an endeavor to clean up, and from
4147 time to time Mr. Hall saw him and he always expected to finish the work at an early date and whenever Mr. Hall would inquire, the answer would always be "Well, something else has come up that I have got to investigate, some unforseen thing came up;" that the U. P. S. coupons was one of the things; that Gledhill thought he was finished there, but in rounding up his papers he found he had something further to get; that Mr. Hall told Gledhill he better go ahead and get it right and have the thing made in a satisfactory shape and that the matter dragged
(3460) along, one thing after another developing, and know-
4147 ing that Gledhill was leaving him Mr. Hall took the responsibility of instructing him to go ahead and finish the job and write the report; that if Mr. Hall had been taken off the work before he wrote the report it would have involved doing half the work over again by another man; that the same satisfactory work could not have been done; that Gledhill had been on that work off and on from the beginning of 1919 and that if Gledhill had left his working papers in draft no one else could have written them and taken the report without having checked over the work again. That Mr. Hall therefore took the responsibility of telling Gledhill to write the report; that after that report was finished Mr. Hall took it himself
4148 and devoted a very considerable time to checking it up, having in mind Mr. Aldrich's statements; that Mr. Hall checked all his papers back against the Wrigley trial balances and against the statements turned in by the Wrigley Company before the Master "so that I satisfied myself that his work was thorough and accurate before that report was passed out"; that he, Mr. Hall, explained just what he had done to the Master when he sent the report to the Master on May 18, 1920. That the written longhand report was sent the master before that; that Mr.
4149 Gledhill finally finished that engagement on January 25, 1920, and left Mr. Hall's employment.

4150 Mr. Hall further stated that the reason he did not send the Larson Company the usual monthly statements from June, 1919, until February 24, 1920, was because in July they only had three days on the job and only two days in September, and they ran into October and expected to
4152 complete the work almost any time. That the Gledhill incident was embarrassing;

(3461) Mr. Hall also stated that he was satisfied that Mr.
4152 Gledhill's work was done "competently, accurately and honestly" and that he (Mr. Hall) had "checked that work over very, very thoroughly and it was an excellent piece of work, one of the best pieces of work I have seen; there is no question at all about Mr. Gledhill's report" and there is "no question at all" about Hr. Gledhill's honesty. I am thoroughly convinced the man is honest; that there
4153 was "nothing at all" about Mr. Gledhill's work or anything that he did that made Mr. Hall think Mr. Gledhill made any false reports or did any dishonest work. "I am thoroughly satisfied with the man's conduct."

Mr. Hall further said that he has with him the particular work which Mr. Gledhill was engaged on in the Wrigley matter during the seventy days after the exposure of his conduct and Mr. Hall then stated the details and nature of what that work consisted of and said that the same subject matters had been embraced within Gledhill's work for which payment had been made prior to June 27, 1919; that Mr. Gledhill's instructions from Mr. Hall were not to take any new issue but merely to clean up the loose ends on which he had started so that the various subjects on which Mr. Gledhill worked after June 27, 1919, were the same subjects that he had been giving his attention to from the time of his appointment up to June 27, 1919.

4156 When Mr. Hall was asked as to whether Mr. Gledhill might have used some of those seventy days for the purpose of covering up dishonest work and impartial work or erroneous calculations or improper figuring previously made by him, Mr. Hall said that there is no evidence at
(3462) all in the papers that there has been any irregular ac-
4156 counting of any kind; that Mr. Hall examined Mr. Gledhill's working papers from the beginning, that is all his working papers, and checked them back one to the other, and to the various trial balances, and "I am satisfied there had been at no time any irregularity in Gledhill's work".

4157 Mr. Hall further said he examined all of Mr. Gledhill's original working sheets and also all of his working sheets and that in his opinion it would not have been possible for Mr. Gledhill to have made calculations before he was accused of wrong doing any different from those which
4158 he made during the seventy days, and Mr. Hall said

that he has all of Mr. Gledhill's working sheets and they can be produced, if desired, and Mr. Aldrich then asked
4159 Mr. Hall if he would safely keep them so that when Mr. Hall came to be examined Mr. Aldrich could go into those sheets and Mr. Hall said they always preserved those sheets as a part of their office records, and Mr. Hall also
4160 said that when Mr. Gledhill left it was of his own volition and that he had used Mr. Gledhill continuously to do other work after this incident and that his other work proved so satisfactory that the client employed Mr. Gledhill.

4161 The master stated that the Larson Company should pay the amount of the two bills of Marwick, Mitchell, Peat & Company amounting to $2,884.50, less $1500. which is $25.00 a day for the 60 days spent by Gledhill after the 10 days had expired in which he stated he could complete the work, reserving for further consideration the question as to whether the Larson Company should pay the $1500.00.

(3463) The master also ruled that the Wrigley Company
4161 should in the first instance pay compensation of the master and reporter for services rendered on the hearing of these motions and other matters incident thereto beginning April 14, 1922, but that such compensation should in the first instance be paid by the Wrigley Company.

(3464) The report of the Wm. Wrigley Jr. Company, Limited, of Canada, was filed on April 21, 1922, with the master.

4162 Wednesday, May 3, 1922.

The master decided that the Larson Company should pay $1500.00 balance of the Marwick, Mitchell, Peat & Company bill.

4163 June 2, 1922.

The Larson Company filed with the master exceptions to the report of the Wm. Wrigley Jr. Company, Limited, the Canadian company.

June 8, 1922. 9:30 A. M.

Notice filed by Mr. Aldrich addressed to counsel for the Wrigley Company stating that on said day Mr. Aldrich would ask the master to set a day upon which said counsel

should proceed with their proofs. The notice also stated that counsel for the Larson Company had decided not to apply to the court with reference to the exclusion of their offers of proof recently made by counsel for the Larson Company which were rejected by the master, and that the case of the Larson Company, so far as the American factories were concerned, was concluded.

Mr. Mayer was out of the city, and the matter was postponed until June 15, 1922, at ten o'clock A. M.

(3465) June 15, 1922. 10:00 A. M.

4164 The master ruled that in view of the time necessary for counsel for the Wrigley Company to prepare to put in its defense, and the approaching summer vacation, he would fix September 25, 1922, as the time when the Wrigley Company should commence its defense.

June 20, 1922. 10:30 A. M.

4165 Mr. Aldrich made a motion that an order be entered permitting Touche, Niven & Company to examine the books of the Wm. Wrigley Jr. Company, Limited, the Canadian corporation.

Mr. Mayer renewed his objection to the master's ruling that the West Virginia corporation should account for the Canadian company.

4166 The master entered an order in accordance with Mr. Aldrich's motion.

4167 July 6, 1922.

The report of the Wm. Wrigley Jr. Company, Proprietary Limited, an Australian corporation, made pursuant to the master's order, was filed with the master. Said report shows a net loss of £3,460.12. 1. from January 1st, 1916 to May 15, 1919, which is the period covered by said report.

end